

STATE OF INDIANA ) IN THE LAKE SUPERIOR COURT  
COUNTY OF LAKE ) SS: CIVIL DIVISION, ROOM FOUR  
ERIC PORTERFIELD ) ) SITTING AT GARY, INDIANA  
Plaintiff, ) CAUSE NO. 45D04-0710-CT-00288  
v. )  
CAVANAUGH'S SPORTS BAR )  
& EATERY, LTD., ) JAN 31 2018  
Defendant. )

**Filed in Clerk's Office**

JAN 31 2018

*Michael A. Brown*  
CLERK LAKE SUPERIOR COURT

**DEFENDANT'S, CAVANAUGH'S SPORTS BAR & EATERY, LTD., DESIGNATION  
OF EVIDENCE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT PURSUANT  
TO INDIANA TRIAL RULE 56**

Comes now, Defendant, CAVANAUGH'S SPORTS BAR & EATERY, LTD., by counsel, Tolbert & Tolbert, LLC and files this Designation of Evidence in Support of Motion for Summary Judgment Pursuant to Indiana Trial Rule 56. The grounds for this designation of evidence, which are incorporated herein by reference as though the same are fully set forth, appear in the accompanying Brief in Support of this motion required by Indiana Trial Rule 56. The following Exhibits, which as referred to in more detail, as designated Exhibits through the accompanying memorandum of law state as follows:

1. Defendant's Exhibit 1 – Plaintiff's Complaint
2. Defendant's Exhibit 2 – Court's Case Management Order, dated June 30, 2010
3. Defendant's Exhibit 3 – Plaintiff's Second Amended Complaint
4. Defendant's Exhibit 4 – Defendant's Answer to Plaintiff's Second Amended Complaint
5. Defendant's Exhibit 5 – Case Management Order, dated April 27, 2017
6. Defendant's Exhibit 6 – Plaintiff's Deposition Transcript, pp. 31, 32, 50, 51, 52, 60, 83, 84, 86 and 93

- 1 A. It -- just a big crowd formed. Everybody jumped in  
2 and it was -- I was lost. I just got out of the  
3 way.
- 4 Q. Would you -- would you agree with me that this all  
5 happened fast?
- 6 A. Yes.
- 7 Q. Okay. Would you agree with me that this was kind of  
8 unexpected and out of the blue?
- 9 A. Yes.
- 10 Q. And was there any problems that you had with Mr.  
11 Porterfield while you were inside Cavanaugh's that  
12 would give you any indication that what transpired  
13 outside of Cavanaugh's was gonna happen?
- 14 A. No.
- 15 Q. Okay. And so this happened rather fast and  
16 abruptly?
- 17 A. Yes.
- 18 Q. Okay. So no altercations with Mr. Porterfield  
19 inside the bar?
- 20 A. No.
- 21 Q. All right. By anybody in your party, do you  
22 recall?
- 23 A. No, not that I recall.
- 24 Q. Okay. You have here, "Jesus fell then everybody  
25 went after the big guy and the fight started"?

- 1 Q. Okay. How far into the library parking lot did the  
2 statement take place?
- 3 A. I'd say towards the middle.
- 4 Q. Towards the middle of the library parking lot?
- 5 A. Yeah.
- 6 Q. How far away was your car from where the incident  
7 took place?
- 8 A. I was actually right by my car.
- 9 Q. Okay. You said it was in the middle of the library  
10 parking lot?
- 11 A. Uh-hum. Because I --
- 12 Q. That's a yes?
- 13 A. Yes. I actually parked that night right by the main  
14 doors to the library, right in front.
- 15 Q. I see. Now, on Defendant's Exhibit 1, your  
16 statement, you also had on what started the fight  
17 that a male, white -- a guy touched your arm. Do  
18 you see that in there?
- 19 A. Yes.
- 20 Q. In the first page?
- 21 A. Yeah.
- 22 Q. Do recall that happening?
- 23 A. Yeah.
- 24 Q. Who was it that touched you?
- 25 A. It was the skinny guy.

- 1 Q. When he touched you was it -- did you want him to  
2 touch you?
- 3 A. No.
- 4 Q. Okay. So it was touching that you didn't want?
- 5 A. Yeah.
- 6 Q. It was unsolicited --
- 7 A. Yeah.
- 8 Q. -- touching? Okay.
- 9 A. But then also it wasn't like a grab to where he  
10 jerked.
- 11 Q. Okay.
- 12 A. It was just like one of them things where you're  
13 walking and someone next to you like -- like touches  
14 you to where -- like wants you to stop, but he  
15 actually physically didn't grab and pull  
16 (indicating).
- 17 Q. Okay. Do you know why he made the statement that he  
18 made to you?
- 19 A. No. I have no idea.
- 20 Q. Did you pull away from him when he grabbed your arm?
- 21 A. Yeah. I just I turned my body and looked, like, I  
22 faced him. Like I stopped walking, turned and faced  
23 him.
- 24 Q. Okay. Would you say that the fight occurred  
25 quickly?

- 1 Q. Okay. You see where it has Cavanaugh's front  
2 entry?
- 3 A. Yes.
- 4 Q. And there looks like parking spaces?
- 5 A. Uh-hum.
- 6 Q. Could you mark for me where the security would be  
7 located outside of the bar close to the parking lot  
8 with the pen. If you would just put security with  
9 an "S" and circle it.
- 10 A. Where they would be at Cavanaugh's?
- 11 Q. Yes. On the day that this incident happened, where  
12 they would be.
- 13 A. Right here (indicating).
- 14 Q. Okay. And when you were walking outside into the  
15 Cavanaugh's parking lot and into the library parking  
16 lot it was during closing time, correct?
- 17 A. Yes.
- 18 Q. Were these spots filled or empty?
- 19 A. I'd say pretty much still filled.
- 20 Q. Okay. And there are also parking spaces that abut  
21 the grass area strip that leads to the library  
22 parking lot, correct?
- 23 A. Yes.
- 24 Q. Do you recall on the night that this incident  
25 happened were there cars there as well?

- 1 A. Yes.
- 2 Q. Okay. Cars and trucks, or just all cars, a mix,  
3 what?
- 4 A. There was probably a mixture.
- 5 Q. All right. And would it be fair to say that the  
6 parking lot was, as far as closing time, was full to  
7 some degree?
- 8 A. Yes.
- 9 Q. All right. Now, when the incident in the statement  
10 was made by the skinny guy could you mark for me  
11 with an "A" where you would have been located when  
12 the statement was made?
- 13 A. I'd say about right here (indicating).
- 14 Q. Okay. Now, that is -- looks like on the north side  
15 of the library, is that correct?
- 16 A. Yes.
- 17 Q. So that would have been on the front entrance of the  
18 library?
- 19 A. Yes.
- 20 Q. There were parking spots there as well, right?
- 21 A. Yes.
- 22 Q. For the library?
- 23 A. Yes.
- 24 Q. Now, your testimony to Mr. Vann was that you didn't  
25 see any security in the parking lot of Cavanaugh's

- 1 A. Yes.
- 2 Q. And security as far as you can tell responded  
3 promptly --
- 4 A. Yes.
- 5 Q. -- and took care of it? That occurred with both the  
6 boys?
- 7 A. Yes.
- 8 Q. You had never seen any problems outside of  
9 Cavanaugh's in the parking lot?
- 10 A. No, I've never seen
- 11 Q. Okay. In fact, the guys that you were with you  
12 don't recall ever seeing them being engaged in other  
13 fights?
- 14 A. No.
- 15 Q. This is the first time you saw that?
- 16 A. Yes.
- 17 Q. Now, where exactly was Porterfield -- if you put a  
18 "P" for big guy, where was he at in relation to like  
19 when the statements were made?
- 20 A. When it first started?
- 21 Q. Yes.
- 22 A. He was right by us, so here (indicating).
- 23 Q. Okay. And that's right in front of the library  
24 door, right?
- 25 A. Yes.

US Hwy. 30

GRASS

GRASSY STRIP

GRASS STRIP

GRASS

SWIMMING POOL

GRASSY STRIP

①

②

③

LIBRARY

SIDEWALK

SIDEWALK

① Edge of Cavanaugh's parking lot where Porterfield + McPherson were confronted.

② Area where McPherson fell to the ground while beaten

③ Area where Porterfield was beaten

tables

EXHIBIT



NORTH

STATE OF INDIANA )  
                     )SS:  
COUNTY OF LAKE )

IN THE LAKE SUPERIOR COURT  
ROOM NUMBER FOUR  
SITTING AT GARY, INDIANA

ERIC PORTERFIELD, )

Plaintiff, )

vs. )

CAVANAUGH'S SPORTS BAR &  
EATERY, LTD., )

Defendant. )

) Cause No.  
45D04-0710-CT-00288

The deposition of JASON IVAN DORADO, taken at the instance of the Defendant herein, pursuant to notice and agreement as to time and place and pursuant to the Statutes of the State of Indiana, before Drea Sasse, CSR, RPR, and Notary Public within and for the County of Porter, State of Indiana, at 1000 East 80th Place, Suite 606, South Tower, Merrillville, Indiana, on December 6, 2008, commencing at the hour of 9:55 o'clock in the morning.

# COPY

SEIDEL & SASSE  
COURT REPORTERS, INC.  
150 West Lincolnway, Suite 1005  
Valparaiso, IN 46383  
219.462.3436

tabbed

EXHIBIT

12

1                   A P P E A R A N C E S:

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6                   (219) 736-0600

7                   on behalf of the Plaintiff;

8                   HOEPPNER, WAGNER & EVANS, LLP, by  
9                   MR. MICHAEL J. TOLBERT  
10                  1000 East 80th Place, Suite 606 South  
11                  Merrillville, Indiana   46410  
12                  (219) 769-6552

13                  on behalf of the Defendant.

14                  \* \* \* \* \*

15                   I N D E X

16                   EXAMINATION:

17	DIRECT EXAMINATION BY MR. TOLBERT.....	3
18	CROSS EXAMINATION BY MR. VANN.....	29
19	REDIRECT EXAMINATION BY MR. TOLBERT.....	43
20	RECROSS EXAMINATION BY MR. VANN.....	52
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22                   EXHIBITS: (First referred to)

24	Dorado Exhibit No. 1.....	16
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1 Q. Okay. You said you used to go to Cavanaugh's every  
2 weekend?

3 A. Yeah, once a weekend or once every week or two  
4 weeks.

5 Q. Would you describe Cavanaugh's as a pretty safe  
6 environment?

7 A. Yeah. It was never -- whenever there was fights,  
8 the bouncers always took care of it. Whenever there  
9 was fights, it never seemed to like go too far, and  
10 it was always taken care of right away.

11 Q. Okay. Now, I want to talk to you a little bit about  
12 the incident that occurred at Cavanaugh's.

13 A. Okay.

14 Q. What happened?

15 A. We had been drinking all night, so everybody was  
16 pretty, you know, intoxicated. We were walking out,  
17 and we walked through the parking lot. And when we  
18 got close to the library parking lot, I was walking,  
19 and with me was Andrea Acevedo, her brother and --  
20 no, no, Anthony. I think it was me, Andrea, Anthony  
21 and Jesus, I think, but they call him Chuce. So we  
22 were walking, and then this guy like turns around,  
23 he was with his buddies, and sees the girl we were  
24 walking with and then asked her questions like -- I  
25 can't -- I'm not 100 percent positive, but she

1           that it was the smaller guy, and it probably was the  
2           smaller guy, but now it's been so long, I put that  
3           behind me, and I really can't be 100 percent  
4           positive to say who it was.

5 Q.       All right. But your recollection then would have  
6           been --

7 A.       From that, yeah, so I would say, obviously, yes, it  
8           was the smaller guy that said something.

9 Q.       And you don't recall what the smaller guy said  
10          specifically as you sit here today?

11 A.       Not exactly.

12 Q.       And what I'm interested about is -- is trying to  
13          find out who threw the first punch.

14 A.       I'm 100 percent positive it was Eric, or the big  
15          guy, he hit Chuce or he hit Jesus, and that was it.

16 Q.       Now, before he threw the first punch, do you recall  
17          what was specifically said before that punch was  
18          thrown?

19 A.       No. I'm sorry, I don't.

20 Q.       Okay. And when he threw the first punch, is that  
21          when the mass fight started?

22 A.       Yeah, it's -- I mean now it's kind of like a blur,  
23          and I try to piece it together, but it's been a long  
24          time, kind of, and I don't want to like say  
25          something wrong, like, where you would call me a

- 1 before I saw them outside.
- 2 Q. Would you say that all of this -- the fight with
- 3 Mr. Porterfield happened fast?
- 4 A. Oh, yeah, very fast. Probably a couple minutes.
- 5 Didn't last that long.
- 6 Q. Now, as you were walking out of the bar area, did
- 7 you walk across the Cavanaugh's parking lot?
- 8 A. Yeah. We walked out the door through the parking
- 9 lot, and the first words were probably saying --
- 10 were probably when he -- when the dude said that to
- 11 the girl, we were like -- the parking lot ends, and
- 12 then there's like a grass walkway which leads to the
- 13 library, and I would say it was in-between like
- 14 right at the edge of where the parking lot meets the
- 15 grass which meets the walkway for the library. So
- 16 we did walk across the parking lot, and we were
- 17 almost to the library. I don't remember exactly --
- 18 I would say it started -- I wouldn't even think it
- 19 was in the parking lot, actually. I would think it
- 20 was in -- because the fight ensued at -- in the
- 21 library parking lot.
- 22 Q. Okay. Now, when the fight began -- so that would
- 23 mean that the first fight -- or the first punch by
- 24 Mr. Porterfield was thrown in the library parking
- 25 lot?

STATE OF INDIANA )  
                  )SS:  
COUNTY OF L A K E)

IN THE LAKE SUPERIOR COURT  
ROOM NUMBER FOUR  
SITTING AT GARY, INDIANA

ERIC PORTERFIELD,                                 )  
  )  
Plaintiff,    )  
  )  
vs.    ) Cause No.  
  ) 45D04-0710-CT-00288  
CAVANAUGH'S SPORTS BAR &                         )  
EATERY, LTD.,                                        )  
  )  
Defendant.    )

The deposition of JESUS VENEGAS, taken at the instance of the Defendant herein, pursuant to notice and agreement as to time and place and pursuant to the Statutes of the State of Indiana, before Drea Sasse, CSR, RPR, and Notary Public within and for the County of Porter, State of Indiana, at 1000 East 80th Place, Suite 606, South Tower, Merrillville, Indiana, on March 28, 2009, commencing at the hour of 2:20 o'clock in the afternoon.

SEIDEL & SASSE  
COURT REPORTERS, INC.  
150 West Lincolnway, Suite 1005  
Valparaiso, IN 46383  
219.462.3436

EXHIBIT

13

1                   A P P E A R A N C E S:

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6                   (219) 736-0600

7                   on behalf of the Plaintiff;

8                   HOEPPNER, WAGNER & EVANS, LLP, by  
9                   MR. ALGER V. BOSWELL, III and  
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13                  on behalf of the Defendant.

14                  \* \* \* \* \*

15                  I N D E X

16                  EXAMINATION:

DIRECT EXAMINATION BY MR. BOSWELL	3
CROSS EXAMINATION BY MR. VANN	29
REDIRECT EXAMINATION BY MR. BOSWELL	41
RECROSS EXAMINATION BY MR. VANN	43

17                  DEFENDANT'S EXHIBITS: (First referred to)

Group No. 1 (previously marked) .....	15
No. 6 .....	16

20                  (Document marked as Defendant's Exhibit  
21                  No. 6 for identification, DS)

1 Q. And you ended up in that area?

2 A. Yeah, I ended up going right here, so somewhere like  
3 from here to here we like merged, and we found each  
4 other like right here, like almost at the grass area  
5 (indicating). And I saw that they were arguing, but  
6 I was like whatever. And that's when I saw she was  
7 arguing with the guy. The guy was walking backwards  
8 arguing with her.

9 Q. Let me stop you right there. Before you got to this  
10 area, did you know that this argument was going on?

11 A. Not really.

12 Q. Were they loud?

13 A. No, I actually -- like I didn't think they had an  
14 argument until I pretty much saw them here  
15 (indicating).

16 Q. So as you were coming across the parking lot,  
17 nothing told you: Hey, something's going on over  
18 here; these people are arguing; these people are  
19 fighting?

20 A. Uh-uh.

21 Q. Is that a no?

22 A. No.

23 Q. So you get to this -- this grassy strip as it's  
24 labeled on the diagram. What happened once you met  
25 up with the group?

1 A. The guy was turned facing her, and he was like  
2 pretty much facing me, and we pretty much met right  
3 there, and he just looked up at me. I guess maybe  
4 he saw that she was like with our group, you know,  
5 earlier. I don't know. But I just saw him, and he  
6 punched me, and he punched me -- he punched me on  
7 this side (indicating) of my face, and I just like,  
8 I guess, got knocked out.

9 Q. Did you exchange any words before he punched you?

10 A. No. Honestly, I don't -- if they had an argument,  
11 it was between them, you know. I really don't --  
12 I'm not that close with her to want to -- you know.

13 Q. Okay. I want to show you in Group Exhibit 1 some  
14 photos marked 4 and 5. Do you recognize anyone in  
15 those photos?

16 A. No.

17 Q. You've never seen this gentleman before?

18 A. I just know that the guy that hit me was big. I  
19 mean, probably him (indicating), I would guess.

20 Q. But you can't --

21 A. No, if I like ran into him, I wouldn't even know.

22 Q. Okay. This guy in picture No. 6, you've never seen  
23 him?

24 A. No.

25 Q. All right. So you merged up with the group, and you

1           said you didn't exchange words with anyone?

2   A.   No.

3   Q.   Is that correct?

4   A.   Correct.

5   Q.   And out of nowhere, this guy just punches you?

6   A.   Yeah.

7   Q.   Did he say anything to you before he punched?

8   A.   No, I don't think he said anything. Because we kind  
9       of all merged, you know, right there at the same  
10      time with them and me. I don't know if they maybe  
11      thought, oh, I was going to like help -- you know,  
12      help them or -- I don't even know who actually was  
13      there, but I know she was there.

14   Q.   You said that this guy that punched you was big.

15   A.   Yeah.

16   Q.   How much bigger was he than you?

17   A.   Well, I heard -- I would say he's about 6 -- I just  
18      remember look up and seeing this guy, and I just got  
19      hit.

20   Q.   You didn't get a chance to get a good look at him  
21      before he punched you?

22   A.   No.

23   Q.   You do remember that he was taller than you?

24   A.   Heavier set.

25   Q.   Okay. He was wider than you as well?

1 Q. Okay. And you hadn't said anything to him at that  
2 time?

3 A. No.

4 Q. When you guys -- when the police got you and were  
5 placing you under arrest, was there anyone else  
6 around -- who was around you when the police were  
7 putting you in cuffs?

8 A. Well, they had -- they had a couple people in cuffs,  
9 you know, I guess.

10 Q. Do you know any of the other guys?

11 A. No. I just know there was me and Jason, you know,  
12 got arrested. I know that because I saw them get  
13 handcuffed, and then I saw them once -- I was in  
14 Crown Point, and I saw them in Crown Point. And I  
15 remember because that one time they handcuffed us  
16 and they sat us down right here in the grass area,  
17 right here by the end of the parking area, right  
18 here, and they had like -- I think there was like  
19 five of us sitting down.

20 Q. Okay. So right here on this diagram, I want you to  
21 write -- make an X and write "punched" or something  
22 like that where you got punched in that area on the  
23 grassy strip.

24 A. (Witness complies).

25 Q. And then do you recall where you were when Anthony

US Hwy. 30

GRASS

GRASS

CAVANAUGH'S

Front  
Entrance

SIDEWALK

GRASSY STRIP

GRASS STRIP

LIBRARY

CAR

SIDEWALK

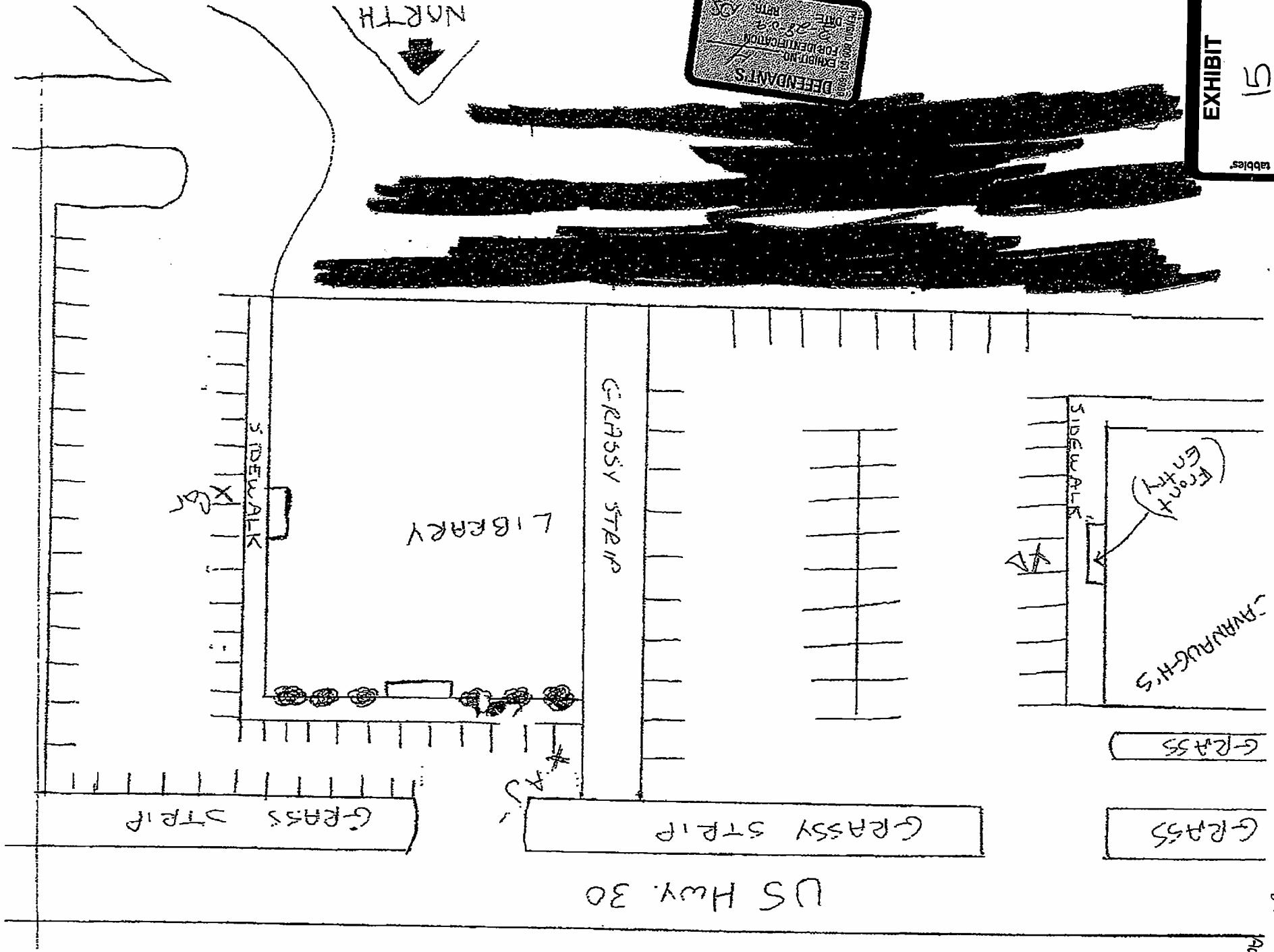
GRASSY STRIP punched

DEFENDANT'S  
EXHIBIT NO.  
FOR IDENTIFICATION  
NAME \_\_\_\_\_  
DATE \_\_\_\_\_  
PTR \_\_\_\_\_

NORTH

14  
EXHIBIT

IL/Complaint  
Verdict



T/C George Anthony

April 11

STATE OF INDIANA )  
                  ) SS:  
COUNTY OF L A K E)

IN THE LAKE SUPERIOR COURT  
ROOM NUMBER FOUR  
SITTING AT GARY, INDIANA

ERIC PORTERFIELD,                         )  
  )  
Plaintiff,                                  )  
  )  
vs.    ) Cause No.  
  ) 45D04-0710-CT-00288  
CAVANAUGH'S SPORTS BAR &                 )  
EATERY, LTD.,                                )  
  )  
Defendant.                                  )

The deposition of ANTHONY ACEVEDO, taken at the instance of the Defendant herein, pursuant to notice and agreement as to time and place and pursuant to the Statutes of the State of Indiana, before Drea Sasse, CSR, RPR, and Notary Public within and for the County of Porter, State of Indiana, at 1000 East 80th Place, Suite 606, South Tower, Merrillville, Indiana, on March 28, 2009, commencing at the hour of 11:15 o'clock in the morning.

SEIDEL & SASSE  
COURT REPORTERS, INC.  
150 West Lincolnway, Suite 1005  
Valparaiso, IN 46383  
219.462.3436

EXHIBIT

16

1                   A P P E A R A N C E S:

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12                  (219) 769-6552

13                  on behalf of the Defendant.

14                  \* \* \* \* \*

15                  I N D E X

16                  EXAMINATION:

DIRECT EXAMINATION BY MR. BOSWELL, .....	3
CROSS EXAMINATION BY MR. VANN.....	32
REDIRECT EXAMINATION BY MR. BOSWELL.....	40
RECROSS EXAMINATION BY MR. VANN.....	41

17                  DEFENDANT'S EXHIBITS: (First referred to)

Group No. 1 (previously marked) .....	14
No. 4.....	18
No. 5.....	2

20                  (Documents marked as Defendant's Exhibit

21                  Nos. 4 and 5 for identification, DS)

1 Q. Okay. All right. So going back to December 10th,  
2 2006, as you and Jesus are leaving Cavanaugh's, tell  
3 me what happened next.

4 A. As I walked out, I saw somebody that I knew outside  
5 of the exit way.

6 Q. And who was that?

7 A. It was this girl I had met from high school.

8 Q. Okay.

9 A. We were just standing there, and I ended up, you  
10 know, running into a couple more people that I knew,  
11 and I was talking to them. And Jesus walked on with  
12 my cousin, Andrea, and Jason Dorado, and they kept  
13 walking. I was hanging back talking for a little  
14 bit. And I want to say probably a minute or two  
15 later, Jesus and my cousin, Andrea, were on the  
16 sidewalk at the library, which would be in the next  
17 parking lot over.

18 Q. I want to stop you right there. I'm going to show  
19 you what's been marked as Defendant's Exhibit No. 4.  
20 This is a diagram that someone has produced of  
21 Cavanaugh's. Does this seem to be a fair  
22 representation of the layout of Cavanaugh's and the  
23 parking lot area?

24 A. Yes.

25 Q. So what I want you to do is tell me where you were

1 Q. And were they yelling towards you? Were they trying  
2 to get your attention?

3 A. No, they were not. I just noticed like people were  
4 yelling and it kind of caught my attention, and then  
5 like I turned around and looked over, and I see this  
6 guy hit Jesus.

7 Q. Okay. So from here, you noticed Jesus get hit over  
8 there?

9 A. Yes.

10 Q. Okay. What did you do after you saw Jesus get hit?

11 A. I saw Jesus get hit, so I ran over. As I was  
12 running over there, most of the crowd that was  
13 leaving Cavanaugh's was in the middle of the parking  
14 lot, and it just turned into like a big crowd.

15 Q. Okay. Did you know the guy who hit Jesus?

16 A. I do not.

17 Q. Was he tall, or short?

18 A. I want to say he was tall because compared to Jesus,  
19 I know he probably had him beat by about four or  
20 five inches.

21 Q. Okay. I want to show you some photos, part of Group  
22 Exhibit 1. The gentleman in picture No. 5, do you  
23 recognize that guy?

24 A. I do not.

25 Q. Okay. All right. So you see Jesus get hit. You

1           bleeding real bad. I mean I think I even got blood  
2           on my shirt from trying to pick him up, and we  
3           walked, and I want to say as soon as I got around  
4           the corner, one of the bouncers from Cavanaugh's had  
5           run over there and stopped me and telling us that we  
6           had to wait because someone had called the cops.  
7           And obviously they knew Jesus had been involved  
8           because he was all full of blood.

9       Q.    Okay. So I want to talk about how long this event  
10      took place. How long did it take you, if you can,  
11      you know, think back from the time you guys exited  
12      the building, and you're talking to this young lady,  
13      until you see Jesus get hit, how long was that?

14     A.    I want to say I was out here probably talking to  
15      this girl for about no longer than two, three  
16      minutes or so.

17     Q.    Okay. And then you see Jesus get hit, and you run  
18      to him. I don't know how fast you can run, but how  
19      long did it take you to get across this parking lot?

20     A.    I want to say maybe about 20, 30 seconds or so.

21     Q.    Okay. And then you grab Jesus, and you tried to get  
22      him to the car?

23     A.    Uh-huh.

24     Q.    How long was that, a matter of seconds or minutes?

25     A.    I would probably say anywhere from a minute or two

1 because it took me a while to get into the crowd  
2 because, I mean, everybody was circled around, so I  
3 was like, you know, shoving people trying to get in.  
4 And once I got in, obviously, I didn't want to get  
5 hit, but I was trying to make sure there was nobody  
6 trying to kick Jesus because he was on the floor,  
7 and I tried to help him up.

8 Q. Okay. Do you recall whether any security personnel  
9 ran with you from the door to the spot where you  
10 said there was a group of people that went over  
11 there?

12 A. Yes.

13 Q. Do you recall seeing any yellow shirts going over  
14 that way with you?

15 A. No, I do not.

16 Q. Okay. But all you know is when you got around to  
17 the car, there was security people there telling you  
18 to stop?

19 A. Yes.

20 Q. And that whole time frame in there was a matter of  
21 seconds or minutes?

22 A. Yes.

23 Q. Okay. So you get Jesus to the car, and somebody  
24 stops you and says, "Okay. You can't go anywhere.  
25 There was a fight." What happened after that?

STATE OF INDIANA )

) SS:

COUNTY OF LAKE )

IN THE LAKE SUPERIOR COURT  
GARY, INDIANA

ERIC PORTERFIELD, )

)

Plaintiff, )

)

vs. ) Cause Number:

) 45D04-0710-CT-00288

NV ENTERPRISES, LTD., )

)

d/b/a CAVANAUGH'S SPORTS )

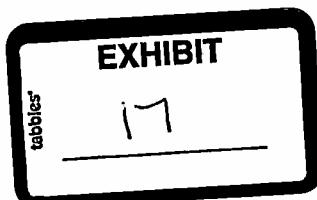
)

BAR & EATERY, )

)

Defendant. )

The deposition of NICK KAROUNOS,  
taken at the instance of the Defendant herein,  
pursuant to notice as to time and place and  
pursuant to the Statutes of the State of  
Indiana, before Jean M. Hincks, a Notary Public  
and Certified Shorthand Reporter within and for  
the County of Cook and State of Illinois, at  
1000 East 80th Place, Suite 606-S, Merrillville,  
Indiana, commencing on the 25th day of November,  
2008, at the hour of 1:15 o'clock in the  
afternoon.



FISSINGER & KNIGHT COURT REPORTERS  
1301 NORTH MAIN STREET  
CROWN POINT, INDIANA 46307  
(219) 662-9922

1 APPEARANCES:

2

3 LAW OFFICE OF ROBERT G. VANN, by

4

MR. ROBERT G. VANN

5

500 East 86th Avenue

6

Merrillville, Indiana 46410  
(219) 736-0600

7

On behalf of the Plaintiff;

8

9

HOEPPNER, WAGNER & EVANS, LLP, by

10

MR. MICHAEL E. TOLBERT

11

1000 East 80th Place

12

Suite 606-S

13

Merrillville, Indiana 46410

14

(219) 769-6552

15

On behalf of the Defendant.

16

17

18

19

20

21

22

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24

25

- 1 Q. How much schooling did you finish?
- 2 A. About half a year.
- 3 Q. Any other post high school education?
- 4 A. No.
- 5 Q. We're here today to talk about an
- 6 incident that occurred at a bar called
- 7 Cavanaugh's on December 9th and 10th of 2006.
- 8 Do you understand that?
- 9 A. Yes.
- 10 Q. And on December 9th and 10th of 2006,
- 11 what was your ownership interest in the bar
- 12 known as Cavanaugh's?
- 13 A. 33 percent.
- 14 Q. Who were the other owners?
- 15 A. Milton, M-I-L-T-O-N; same last name,
- 16 Karounos.
- 17 Q. What was his interest?
- 18 A. 33 percent and a third.
- 19 Q. There was a third person?
- 20 A. Scott V-O-G-T, Vogt.
- 21 Q. Who's Milton Karounos?
- 22 A. Brother.
- 23 Q. Who's Scott Vogt?
- 24 A. Just a partner.
- 25 Q. How do you know him?

1 Q. What was Tim's position at that point?

2 A. Manager in training.

3 Q. What was his position before that?

4 A. Security.

5 Q. Bouncer?

6 A. I call him security.

7 Q. It's a guy that stands at the door and  
8 checks I.D., correct?

9 A. Not all seven.

10 Q. Right. I'll get to that. There's one  
11 or two guys. How many guys stand at the door  
12 and check I.D.s?

13 A. At least two.

14 Q. I assume all your bouncers are men, is  
15 that correct?

16 A. Yes.

17 Q. And then what do the other bouncers do?

18 A. Provide security.

19 Q. They're inside walking around?

20 A. Yes.

21 Q. Okay, and do you know who the bouncers  
22 were on those two -- I'm just going to say the  
23 night of the incident. Do you understand that  
24 the night is December 9th and 10th?

25 A. Yes.

1           A. No.

2           Q. Do you know how many people were  
3 leaving at closing time?

4           A. No.

5           Q. Do you know how many people in general  
6 would be leaving on a typical Saturday night at  
7 or around closing time during that time frame?

8           A. On a typical Saturday night at closing  
9 time?

10          Q. Yeah.

11          A. What would be considered closing time,  
12 an hour prior to closing?

13          Q. No. Closing, just after 3:00 o'clock  
14 when your people are trying to get everybody out  
15 of there.

16          A. Typically, we would stop serving at  
17 2:45 and turn the music off, turn the lights on  
18 halfway, and allow people to filter out till  
19 about 3:15.

20          Q. And then you say everybody out, is that  
21 right? At some point, somebody says everybody  
22 get out, whoever's left?

23          A. Yeah.

24          Q. How many people would be exiting  
25 en masse at that particular time on a given

1 Saturday night?

2 A. I'm not sure.

3 Q. At no time during the time that you  
4 owned and oversaw Cavanaugh's, did you have a  
5 security company or service employed by you, did  
6 you?

7 A. No.

8 Q. At no time during the entire time that  
9 you owned Cavanaugh's, did you have security out  
10 in the parking lot, did you?

11 A. Yes, we did.

12 Q. Okay. When was that?

13 A. Typically -- I'm not sure what periods  
14 we had security out in the parking lots, but we  
15 would have security in the parking lot, and then  
16 one person that would work the exit door would  
17 typically be on the outside of the exit door.

18 Q. When was that?

19 A. I'm not sure. What do you mean?

20 Q. Well, you understand -- you'd agree  
21 that on the night of the incident there were no  
22 Cavanaugh's employees out in the parking lot at  
23 the time of the incident?

24 A. It's not necessarily true.

25 Q. Why is that not true?

1 did not have a policy or any person that was  
2 charged with the duty to be out policing the  
3 parking lot at closing time?

4 A. Staff at the door would keep an eye on  
5 the parking lots.

6 Q. The question is, again, aside from the  
7 person that we went through that was standing  
8 there making sure that people did not walk out  
9 with an open container or reenter, that's the  
10 person that was in charge of the parking lot,  
11 correct, so we're on the same page?

12 A. No. There would have possibly been  
13 three people up at the front door.

14 Q. Right. Whether it's one, two, three,  
15 or 10 that are standing by the front door making  
16 sure that people don't leave with an open  
17 container or come back in or enter the building  
18 for the first time are the people that were in  
19 charge of the parking lot?

20 A. Those people would walk the parking  
21 lots on occasion, and there were periods of time  
22 when we specifically had somebody in the parking  
23 lots.

24 Q. But again, there was no one in  
25 charge -- in December of 2006, there was no one

STATE OF INDIANA ) IN THE LAKE SUPERIOR COURT  
COUNTY OF LAKE ) SS: CIVIL DIVISION, ROOM FOUR  
ERIC PORTERFIELD ) SITTING AT GARY, INDIANA  
Plaintiff, ) CAUSE NO. 45D04-0710-CT-00288  
v. )  
CAVANAUGH'S SPORTS BAR )  
& EATERY, LTD., )  
Defendant. )

**AFFIDAVIT OF JAMES H. CLARK**

I, James H. Clark, being first affirmed on his oath, state as follows:

1. I am a Board Certified Protection Professional and owner of Clark Security Group Security Management Consultants.
2. I have over forty (40) years of experience in security management and law enforcement.
3. I have served as an independent security consultant for over twenty seven (27) years and have been retained in over 200 litigation matters.
4. I am over twenty-one (21) years of age.
5. I am competent to testify to the matters stated herein and in examining this matter, I have followed the Forensic Methodology for Security Consultants, guidelines established by the International Association of Professional Security Consultants. These best practices have been peer reviewed and court tested.
6. I have personal knowledge of the facts contained herein.
7. I have reviewed the parties' pleadings and interrogatory responses, the Schererville Police Department investigative reports, the December 10, 2006 Arrest Narrative and the Schererville Police Department Call Out Log for Cavanaugh's.

**EXHIBIT**

tables

18

8. I have also reviewed the depositions of the Plaintiff, Andrea Acevedo, Anthony Acevedo, Jesus Venegas, Jason Dorado, Nick Karounos, Stephen Patrick McPherson, Officer Anthony Buonadonna and Detective Michael Vode.

9. I have further reviewed the audio police interview of the Plaintiff and the video police interviews of Plaintiff's Counsel, Anthony Acevedo and Jason Dorado.

10. The security practices employed by Cavanaugh's Sports Bar & Eatery, LTD. ("Cavanaugh's") on the date of the incident were reasonable based on Cavanaugh's experience in operating a bar and appropriate under the circumstances described in this matter.

11. The security standards and practices of Cavanaugh's were consistent with the standards and practices employed at other sports bar and night club establishments in the State of Indiana. Those practices included the presence of security officers, posted within and at the door of the establishment to check ID's, observe patron behavior, to provide a deterrent to potential altercations and to break them up when they occur. At the end of the evening those responsibilities extended to moving patrons out of the bar, making certain patrons did not leave with drinks, and to observe the parking lot to move patrons along and discourage them from lingering on the premises.

12. The incident involving the Plaintiff was an instantaneous and unforeseeable event that occurred after the parties left Cavanaugh's.

13. The incident was not precipitated by any prior behavior or activities of the parties while inside Cavanaugh's.

14. It was unforeseeable for Cavanaugh's security staff to anticipate the incident occurring since the initial exchange between the parties happened some distance from the front door and by most accounts occurred in the area in front of the library which was adjacent to Cavanaugh's.

15. The further the parties moved away from Cavanaugh's, the less culpable Cavanaugh's became since the incident occurred some distance from the front the establishment.

16. Cavanaugh's had no duty to go onto the library's premises to prevent the incident from occurring since the area was outside the scope of Cavanaugh's responsibility.

17. It was virtually impossible for Cavanaugh's security staff to prevent a patron, whether drunk or sober, from striking another patron in a spontaneous manner such as occurred in this case.

18. The Plaintiff willingly engaged in the altercation by first engaging in a verbal rebuke of his friend, Stephen McPherson for apologizing to a woman McPherson had just insulted, calling her a bitch. And then, calling out the female's companions, asking them "what are you bitches going to do about it"? Finally, he elevated the verbal altercation to a physical one by being the first one to punch another patron.

19. Cavanaugh's cannot be responsible for the unforeseeable criminal acts involving Mr. Porterfield and other parties.

20. The circumstance as they occurred in this matter were not reasonably foreseeable to Cavanaugh's security staff. In fact, once they became aware of the altercation, their immediate response to break up the fight, care for the injured and detain the combatants for police who they had contacted were all reasonable and appropriate under the circumstances. These actions are consistent with best practices in the bar and night club industry in the State of Indiana.

I affirm, under the penalties for perjury, that the foregoing representations are true.

James H. Clark  
James H. Clark  
January 30, 2018  
Date

STATE OF INDIANA      )  
                        )SS:  
COUNTY OF LAKE        )

IN THE LAKE SUPERIOR COURT  
CIVIL DIVISION, ROOM FOUR  
SITTING AT GARY, INDIANA

ERIC PORTERFIELD,      )  
Plaintiff,              )  
vs.                      ) Cause No.  
CAVANAUGH'S SPORTS BAR &      ) 45D04-0710-CT-00288  
EATERY, LTD.,            )  
Defendant.              )

The deposition of CORPORAL MICHAEL A. VODE, taken at the instance of the Defendant herein, pursuant to notice and agreement as to time and place and pursuant to the Statutes of the State of Indiana, before Kathryn M. Seidel, a competent and duly qualified court reporter, CSR, RPR, at 1000 East 80th Place, Merrillville, Indiana, on March 19, 2010, commencing at the hour of 10:07 o'clock in the morning.

**COPY**

SEIDEL & SASSE  
COURT REPORTERS, INC.  
150 W. Lincolnway, Suite 1005  
Valparaiso, IN 46383  
219.462.3436

EXHIBIT

tabies

19

1                   A P P E A R A N C E S:

2  
3                   MR. ROBERT G. VANN  
4                   500 East 86th Avenue  
5                   Merrillville, Indiana 46410  
6                   (219) 736-0600

7                   on behalf of the Plaintiff;

8                   HOEPPNER, WAGNER & EVANS, LLP, by  
9                   MR. MICHAEL J. TOLBERT  
10                  1000 East 80th Place, Suite 606 South  
11                  Merrillville, Indiana 46410  
12                  (219) 769-6552

13                  on behalf of the Defendant.

14                  \* \* \* \* \*

15                   I N D E X

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- 1 A. Possibly 15, 20 minutes.
- 2 Q. Okay. And what was discussed during this meeting?
- 3 A. Where I was at with the investigation, and  
4 obviously that I needed to still get a statement  
5 from Eric Porterfield. And I believe at that time,  
6 he did decide that he didn't want to give a  
7 statement, and he -- and they decided to waive  
8 investigation.
- 9 Q. Okay. Did you talk about, with Mr. Vann and  
10 Mr. Porterfield, the importance of his statement to  
11 the investigation?
- 12 A. Yes. I believe that's -- basically, I still needed  
13 to get that statement in order to continue with the  
14 investigation.
- 15 Q. Did you tell them why you needed it?
- 16 A. Yes.
- 17 Q. Okay.
- 18 A. To finish the investigation.
- 19 Q. All right. And what did they say to you after you  
20 told them about needing --
- 21 A. I believe they met. I don't remember.
- 22 THE WITNESS: Didn't you guys have a  
23 little bit of time by yourselves or --
- 24 A. Basically it ended up that day that they decided to  
25 waive investigation and not to -- and for me not to

1                   THE WITNESS:

2 A. We all talked by the end of the day and --

3                   MR. VANN: -- ask some questions.

4                   THE WITNESS:

5 A. Yeah. And --

6                   MR. VANN: Ask questions.

7                   THE WITNESS:

8 A. And I met with both of them again basically, and it  
9 was agreed that -- like I said, that Porterfield  
10 did not want to give me a statement and that he  
11 wanted to waive investigation. So basically, that  
12 ended the -- ended the investigation.

13                  MR. TOLBERT:

14 Q. Okay. I'm looking at your June 26th, 2007 note.

15 It says you prepared a question and answer  
16 statement for Porterfield, and I believe that might  
17 be in here.

18 A. Okay.

19 Q. You do this for most of your witnesses, all of your  
20 witnesses that you -- that you talk to?

21 A. Most of them, yes. Most of them.

22 Q. Okay. And the -- what is the purpose of preparing  
23 this voluntary statement ahead of time?

24 A. Well, at this point, I mean -- like I said, if I --  
25 if I'm just starting an investigation, it's usually

7. The Plaintiff's alleged injuries were not proximately caused by any negligence, fault, willful conduct, or wanton of care on the part of Defendant.

8. Plaintiff's alleged damages and/or injuries were caused in whole or in part by the non-party assailant or assailants, who are believed to have attacked Plaintiff on December 10, 2006.

9. Plaintiff failed to mitigate his damages.

10. Plaintiff's claim is barred by the sudden emergency doctrine.

11. Plaintiff is more than 50% at fault and, therefore, should be barred from recovery.

12. Plaintiff has failed to state a claim for which relief can be granted under T.R. 12(B)(6).

13. Plaintiff's claim is barred by doctrine of incurred risk and assumption of risk.

14. Plaintiff's alleged damages and/or injuries were caused in whole or in part by the following non-parties:

a). Steven P. McHerson, 697 James Wittchen Dr. Schererville, Indiana

b). Jesus Meraz Venegas, 4134 Northcote Avenue East Chicago, Indiana

c). Jason I. Dorado, 2361 Hobart St. Gary, Indiana 46404

d). Anthony Acevedo, 149 Durbin St. Gary, Indiana

e). Andrea Acevedo, 2441 Burr. St. Gary, Indiana

f). Mark Nolan Smith

Respectfully submitted,

**HOEPPNER WAGNER & EVANS LLP**



Michael E. Tolbert, 22555-64  
Attorney for Defendant

HOEPPNER WAGNER & EVANS LLP  
1000 East 80<sup>th</sup> Place  
Twin Towers - South, 6<sup>th</sup> Floor  
Merrillville, IN 46410  
219-769-6552

**JURY DEMAND**

Comes now Defendant, Cavanaugh's Sports Bar & Eatery, LTD, and demands trial by jury on all issues.

Respectfully submitted,

**HOEPPNER WAGNER & EVANS LLP**



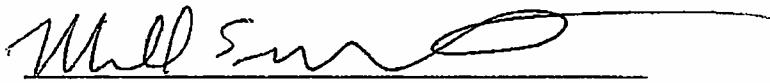
Michael E. Tolbert, 22555-64

HOEPPNER WAGNER & EVANS LLP  
1000 East 80<sup>th</sup> Place  
Twin Towers - South, 6<sup>th</sup> Floor  
Merrillville, IN 46410  
219-769-6552

**CERTIFICATE OF SERVICE**

I certify that on May 26, 2011, service of a true and complete copy of the foregoing "Defendant's Answer to Second Amended Complaint" was made upon the following counsel of record by depositing same in the United States Mail in an envelope properly addressed and with sufficient first-class postage affixed:

Robert G. Vann, Esq.  
Attorney at Law  
500 East 86<sup>th</sup> Avenue  
Merrillville, IN 46410



Michael E. Tolbert, # 22555-64

HOEPPNER WAGNER & EVANS LLP  
1000 East 80<sup>th</sup> Place  
Twin Towers - South, 6<sup>th</sup> Floor  
Merrillville, IN 46410  
219-769-6552

STATE OF INDIANA  
COUNTY OF LAKE

)  
ss:  
)

LAKE SUPERIOR COURT  
CIVIL DIVISION ROOM 4  
SITTING IN GARY, IN

FILED IN OPEN COURT

APR 27 2017

ERIC PORTERFIELD

Plaintiff(s),

-v-

CASE 45D04-0710-CT-00288

BRECK JUDGE  
SUPERIOR COURT OF LAKE COUNTY

CAVANAUGH'S SPORTS BAR & EATERY LTD

Defendant(s).

#### CASE MANAGEMENT ORDER

This cause came before the Court on a Status Hearing. Plaintiff(s) appeared by Attorney Leon Sarkisian.

The Defendant(s) appeared by Attorney(s) Michael Tolbert.

1. Mediation is NOT Ordered at this time. If at a later date the parties agree to mediation, a Stipulation indicating the civil mediator must be filed with the Court.
2. The parties anticipate a Jury / Bench Trial lasting \_\_\_\_\_ days.
3. This matter is set on \_\_\_\_\_ at 8:30 a.m. Each Attorney shall check-in with the Court's Bailiff at 8:30 a.m.
4. Attorney for the Defendant shall prepare a Pre-Trial Order as required. The Pre-Trial Order shall be signed by all Attorneys and shall be filed with the Court on or before \_\_\_\_\_.  

(A) Parties shall exchange their Contentions of Fact and Law, Final Witness List, and List of Exhibits on or before \_\_\_\_\_.

(B) At a minimum, these Submissions shall be conveyed to the Court and opposing Attorney(s) electronically.
5. Plaintiff shall identify their Expert Witness(es) by no later than \_\_\_\_\_. This deadline shall not enlarge or extend the time within which a party is required to supplement a response to previously served discovery as required by TR 26(E). Defendant(s) shall then have thirty days to identify their Expert Witness(es).
6. All Discovery shall be completed by December 29, 2017.
7. All Dispositive Motions shall be filed by January 31, 2018.
8. Attorneys for the parties shall jointly prepare and sign a Preliminary Instruction on the issues herein to be submitted to the Room Four Court Reporter via e-mail (CivilRoomFour.filings@lakecountyin.org), or via CD-ROM, seven days prior to the commencement of the trial, together with their proposed final jury instructions. Attorneys for the parties may each submit no more than ten proposed Final Jury Instructions, and those instructions shall be in conformity with the Indiana Trial Rules. All of the foregoing shall be in Word format.
9. Only standard or routine Motions in Limine will be taken on the morning of trial. It is the obligation of proposing Attorney to schedule for hearing prior to trial date all Motions in Limine relating to evidentiary matters or requiring argument.
10. Status Conference set for February 1, 2018, at 9:00 AM.
11. Other: Discovery issues remain; mediation has been completed. Plaintiff to initiate teleconference.

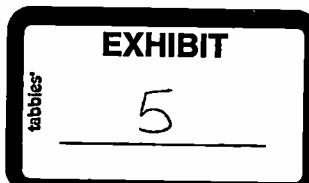
leon@sarkisianlaw.com  
mtolbert@tolbertlegal.com

SO ORDERED this 27<sup>th</sup> day of APRIL, 2017.

*Bruce D. Parent*

Bruce D. Parent, Judge  
Lake Superior Court, Civil Room Four

Distribution: In Court, by Court, on above-listed date.



1 STATE OF INDIANA )  
2 COUNTY OF LAKE )

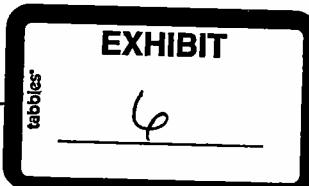
3  
4 IN THE LAKE SUPERIOR COURT  
5 ROOM NUMBER FOUR  
6 SITTING AT GARY, INDIANA

7 ERIC PORTERFIELD, )  
8 Plaintiff, )  
9 VS. )Cause No.  
10 CAVANAUGH'S SPORTS BAR )45D04-0710-CT-00288  
11 & EATERY, LTD., )  
12 Defendant. )

13  
14 The deposition of ERIC EARL PORTERFIELD,  
15 taken at the instance of the Defendant herein,  
16 pursuant to notice and agreement as to time and place  
and pursuant to the Statues of the State of Indiana,  
before Tina A. Parent-Cowser, CSR, CRI, and Notary  
Public within and for the County of Porter, State of  
Indiana, at 1000 East 80th Place, Merrillville,  
Indiana, on the 25th day of November, 2008, commencing  
at the hour of 10:15 o'clock in the morning.  
17  
18

19  
20 **COPY**  
21

22 SEIDEL & SASSE  
23 COURT REPORTERS, INC.  
24 150 W. Lincolnway, Suite 1005  
Valparaiso, Indiana 46383  
(219) 462-3436  
25



1                   A P P E A R A N C E S :

2  
3                   MR. ROBERT G. VANN  
4                   THE LAW OFFICE OF CLEMENTS & VANN  
5                   500 East 86th Avenue  
6                   Merrillville, Indiana 46410  
7                   (219) 736-0600

8                   on behalf of the Plaintiff;

9  
10                  MR. MICHAEL A. TOLBERT & MR. ALGER  
11                  BOSWELL  
12                  HOEPPNER, WAGNER & EVANS  
13                  1000 East 80th Place  
14                  Suite 606, South Tower  
15                  Merrillville, Indiana 46410  
16                  (219) 769-6552

17                  on behalf of the Defendant.

18                  \* \* \* \* \*

19                  I N D E X :20                  EXAMINATION:

21                  Direct Examination by Mr. Tolbert . . . . . Pg. 3  
22                  Cross-Examination by Mr. Vann . . . . . Pg. 113  
23                  Redirect Examination by Mr. Tolbert . . . . . Pg. 115

24                  EXHIBITS:

25                  (First Referred To):

26                  Defendant's Exhibit No. 1 . . . . . Pg. 45

27                  \* \* \* \* \*

- 1 Q. I see, but December --  
2 A. 9th.  
3 Q. Okay. The incident would have happened on  
4 December 9th?  
5 A. On the 10th.  
6 Q. On the 10th?  
7 A. That's correct.  
8 Q. Okay. It carried over because it happened at  
9 3:00 a.m.?  
10 A. That's correct.  
11 Q. Okay. I got you. Now, you said you had been a  
12 couple places before?  
13 A. One place prior to Cavanaugh's, sir.  
14 Q. Where had you been before?  
15 A. The Sky Box in Harvey or South Holland,  
16 Illinois.  
17 Q. What is the sky Box?  
18 A. It's a bar over there.  
19 Q. Okay. What type of bar?  
20 A. It's a gentlemen's club there.  
21 Q. And when you say gentlemen's club, what do you  
22 mean by that?  
23 A. It's a strip club.  
24 Q. Do you recall what time you would have been at  
25 the Sky Box?

- 1 A. I am not sure what time we arrived, but I know  
2 we left there between 10:15 and 10:30.
- 3 Q. When you say 10:15 or 10:30 --
- 4 A. Between that time.
- 5 Q. Between that time?
- 6 A. Right.
- 7 Q. That would have been in the p.m.?
- 8 A. That is correct. We were at Cavanaugh's by  
9 11:00.
- 10 Q. Okay. And the Sky Box is in Harvey you said?
- 11 A. South Holland, Harvey. It's 167th and Halstead  
12 so whatever that is.
- 13 Q. But that's in Illinois?
- 14 A. Yes, sir.
- 15 Q. And who would have been driving?
- 16 A. I was.
- 17 Q. Okay. And did you pick Mr. McPherson up?
- 18 A. Met me at my apartment.
- 19 Q. Okay. Where does he live?
- 20 A. Schererville.
- 21 Q. Does he still live there?
- 22 A. I do not think. He lives in Schererville, but  
23 not there.
- 24 Q. Do you have his number?
- 25 A. His phone number? Sure.

- 1 Q. That was for Mr. McPherson?
- 2 A. Steve liked her. She was living with a guy,  
3 though. We always used to pick on Steve. He  
4 liked to sit in there and chitchat with her.  
5 That is sometimes where we went, and that is  
6 where we made our plans to go that night so  
7 that's where we were.
- 8 Q. What was Debbie's last name?
- 9 A. I do not know. Steve might be able to tell you  
10 that. He's told me and I do not remember.
- 11 Q. She is a bartender there?
- 12 A. Not there anymore.
- 13 Q. Okay. You don't know where she is now?
- 14 A. I do.
- 15 Q. Where is she at?
- 16 A. You will have to ask your guy at 1:00 o'clock  
17 because she is working for him still.
- 18 Q. All right. When you guys sat down at the bar,  
19 do you recall having any problems with any  
20 patrons while you were at the bar?
- 21 A. Never. No, sir. Not at all.
- 22 Q. Do you recall any confrontations or altercations  
23 inside the bar?
- 24 A. No, sir.
- 25 Q. Okay. So no problems? No shouting? No

- 1           yelling?
- 2 A.       Nothing.
- 3 Q.       And is Mr. McPherson drinking at this point?
- 4 A.       Yes.
- 5 Q.       And I think you said you guys left the sky Box
- 6           between 10:00 and 10:30?
- 7 A.       I would say a little later than 10:00. I would
- 8           say between 10:15 and 10:30. We were at
- 9           Cavanaugh's by 11:00. If it was after 11:00, it
- 10          was only a few minutes after. It wasn't much
- 11          after.
- 12 Q.       That would have been 11:00 p.m.?
- 13 A.       Yes, sir.
- 14 Q.       So you probably were at Cavanaugh's at about
- 15          11:00 p.m.?
- 16 A.       Yes.
- 17 Q.       And Mr. McPherson was drinking while he was at
- 18          Cavanaugh's?
- 19 A.       Yes, sir.
- 20 Q.       Do you know how much he was drinking?
- 21 A.       I have no idea, sir.
- 22 Q.       What time did you guys leave Cavanaugh's?
- 23 A.       When it closed.
- 24 Q.       And what time --
- 25 A.       3:00 o'clock a.m. on December 10th.

1 Q. Now, as you guys are leaving Cavanaugh's, are  
2 you leaving with a group of people, or is it  
3 just you?

4 A. Just Steve and I.

5 Q. Okay. When you were leaving, were things pretty  
6 much still going on in the bar?

7 A. They were getting people out, and people were  
8 leaving and the bar was clearing out.

9 Q. All right, but it would have just been you and  
10 Steve as you were going. It wasn't this herd of  
11 people that would have been trying to go outside  
12 of Cavanaugh's?

13 A. Like, there was a lot of people going out, but  
14 it was just like Steve and I were the only ones  
15 together.

16 Q. All right. I got you. So when you were leaving  
17 Cavanaugh's, did you have any problems or  
18 altercations with a patron while you were inside  
19 Cavanaugh's?

20 A. No, sir.

21 Q. Did anyone say anything to you while you were  
22 inside Cavanaugh's?

23 A. No, sir.

24 Q. Did you say anything to anyone --

25 A. No, sir.

1 Q. Did you walk towards the action?

2 A. I was a few feet away. I may have taken a step  
3 and said, "Hey, you leave him alone." And when  
4 they turned their direction towards me, Steve  
5 bailed out of there, but then he ended up  
6 getting jumped on, too.

7 Q. So when you turned around and you said, "He  
8 didn't do anything." At that point, did  
9 Mr. McPherson run?

10 A. He walked out from the circle, and he was -- he  
11 had his head down towards him, and as soon as he  
12 seen that, seen an opportunity to get away from  
13 him, he started walking out towards me, and I  
14 was stopped.

15 I wasn't walking towards them in an  
16 aggressive nature. I turned around to stop and  
17 address them away from them with plenty of room  
18 between us; not arm's length.

19 Q. Now, how far was this exchange? How far away  
20 from the entrance of Cavanaugh's Bar were you?

21 A. I can't judge feet. We're on the hard top there  
22 so I don't know, halfway? Halfway,  
23 three-quarters of the way.

24 Q. Three-quarters of the way into the parking lot?

25 A. Yeah, after it all got going, yeah, I guess.

1 A. Okay.  
2 Q. All right. And you refused to give a statement?  
3 A. Okay.  
4 Q. That is a yes, you wouldn't give a statement?  
5 A. Yes, sir.  
6 Q. Okay. Why wouldn't you give information that  
7 would help track down the people that did this  
8 to you?  
9 A. I was in work with my attorneys, and they had  
10 asked me not to give it at that time.

11 MR. VANN: It was upon the advice of  
12 counsel.

13 MR. TOLBERT:

14 Q. Okay.  
15 A. I figured he is my lawyer. He knows more than I  
16 do so I better listen to him. That is what I  
17 was told always to do.  
18 Q. All right. And you didn't give a statement that  
19 would help authorities investigate this incident  
20 that happened in December of 2006, right?

21 A. Let me make it clear --

22 MR. VANN: Objection. That's already  
23 been asked and answered.

24 MR. TOLBERT:

25 Q. Okay. And you also advised the Schererville

1 Police Department that you did not want to  
2 pursue criminal charges against the people that  
3 you were involved in this incident with in  
4 December of 2006, correct?

5 MR. VANN: That again was on the  
6 advice of counsel.

7 THE WITNESS:

8 A. Yes, sir.

9 MR. TOLBERT:

10 Q. So that is a yes?

11 A. Yes. Well, it's on the advice of my counsel,  
12 and based upon what my attorneys asked me to do,  
13 that is correct.

14 Q. Okay. So Mr. Vann told you not to pursue  
15 criminal charges against the people that you  
16 were involved in this altercation with?

17 A. That is correct.

18 Q. And the people that arguably blinded you? Not  
19 arguably, but did blind you?

20 A. No, I think it's arguably. I think it could  
21 have been avoided, you know, from circumstances  
22 at the bar, but yes, Mr. Vann advised me not to  
23 do that, and I followed his instruction.

24 Q. Okay.

25 A. That is something you can take up with him.

1           that I've never seen it so if you would like to  
2           read it to me, I can affirm that I signed it.

3 Q.       What was your understanding of your signature on  
4           the waiver?

5 A.       It depends on what you're talking about as far  
6           as I signed. I don't have the waiver to look at  
7           and say yes, I signed this.

8 Q.       You do recall signing something relinquishing  
9           your ability to pursue criminal charges?

10 A.       Oh, okay, yes, sir.

11 Q.       All right.

12                   MR. VANN: Objection as to the  
13                   characterization of the statement. He  
14                   doesn't have the ability to relinquish the  
15                   right to pursue criminal charges. That is  
16                   solely within the purview of the State of  
17                   Indiana.

18                   MR. TOLBERT:

19 Q.       Okay, but you advised the prosecutors or the  
20           State of Indiana that you did not want to pursue  
21           the people that you were involved in the  
22           altercation with, right?

23                   MR. VANN: Objection. The document  
24                   speaks for itself. That is not what it  
25                   says.

1 loose.

2 Q. Okay. Do you recall biting someone's ear?

3 A. I don't necessarily recall it, but it's very  
4 possible with just a bunch of guys on you just  
5 doing anything to get loose from them. It's not  
6 like a specific, you know what I mean, target of  
7 biting. And without my sight, I don't know what  
8 or if I bit and what it was. It's hard to tell.

9 Q. Okay. When the statements were directed at  
10 Mr. McPherson and you turned around, at that  
11 point in time, did you have any indication that  
12 you would be involved in a brawl?

13 A. Not until I was assaulted, no.

14 Q. So the first time that you really realized that  
15 you were going to be in a brawl was right when  
16 it occurred; when it happened to you?

17 A. Right.

18 Q. Okay. Were you surprised when you were hit?

19 Was it unexpected?

20 A. Yes, sir.

21 Q. Was there anything that occurred inside the bar?  
22 Well, let me ask you this question. Did you  
23 have a chance to speak or have any contact with  
24 the assailants while you were inside  
25 Cavanaugh's?

STATE OF INDIANA )  
                  ) SS:  
COUNTY OF L A K E)

IN THE LAKE SUPERIOR COURT  
ROOM NUMBER FOUR  
SITTING AT GARY, INDIANA

ERIC PORTERFIELD,                                      )  
  )  
Plaintiff,    )  
  )  
vs.    ) Cause No.  
CAVANAUGH'S SPORTS BAR &                            ) 45D04-0710-CT-00288  
EATERY, LTD.,    )  
  )  
Defendant.    )

The deposition of STEVEN PATRICK McPHERSON,  
taken at the instance of the Defendant herein, pursuant  
to notice and agreement as to time and place and  
pursuant to the Statutes of the State of Indiana, before  
Drea Sasse, CSR, RPR, and Notary Public within and for  
the County of Porter, State of Indiana, at 1000 East  
80th Place, Suite 606, South Tower, Merrillville,  
Indiana, on March 28, 2009, commencing at the hour of  
9:13 o'clock in the morning.

SEIDEL & SASSE  
COURT REPORTERS, INC.

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EXHIBIT

tables

7

1 A P P E A R A N C E S:

2 MR. ROBERT G. VANN  
3 ATTORNEY AT LAW  
4 500 East 86th Avenue  
Merrillville, Indiana 46410  
(219) 736-0600

5 on behalf of the Plaintiff;

6 HOEPPNER, WAGNER & EVANS, LLP, by  
7 MR. ALGER V. BOSWELL, III and  
8 MR. MICHAEL J. TOLBERT  
1000 East 80th Place, Suite 606 South  
Merrillville, Indiana 46410  
(219) 769-6552

9  
10 on behalf of the Defendant.

11 \* \* \* \* \*

12 I N D E X

13 EXAMINATION:

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22 \* \* \* \* \*

23  
24 (Documents marked as Defendant's Group  
Exhibit No. 1 and No. 2 for identification)  
25

1 Q. You guys just kind of hung out in the bar area?

2 A. Correct.

3 Q. And you don't recall any other altercations or  
4 fights that you might have had with someone prior to  
5 December 10th, 2006; is that correct?

6 A. Correct.

7 Q. So let's get back to that night. The lights come  
8 on; you tell them to cut the lights back off. What  
9 happens after that?

10 A. We decide it's probably time to go, so we started  
11 walking out and headed towards the vehicle.

12 Q. Okay. How many doors are there to exit from  
13 Cavanaugh's?

14 A. One that I know of. The front door, there's two  
15 front doors, but they usually make everyone go out  
16 from the left. People come in one door and go out  
17 the other.

18 Q. That's how it's been the other times you've been to  
19 Cavanaugh's as well?

20 A. Yes.

21 Q. Is there security at that door?

22 A. Yes.

23 Q. How many security guards are at that door?

24 A. I don't know. I could guess there's usually a  
25 couple guys standing there, I mean. There's a

1           couple guys inside. I don't know how many people  
2           they had on staff, though.

3   Q.    Okay. All right. So you guys head for the exits.  
4           What happens next?

5   A.    We started walking toward the vehicle.

6   Q.    All right. I'm going to show you what the court  
7           reporter has previously marked as Defendant's  
8           Exhibit No. 2. As you look at this, is this a fair  
9           representation of the layout of Cavanaugh's and the  
10          parking lot?

11   A.    I would say so, yes.

12   Q.    Okay. You say you started walking to the vehicle.  
13           Can you -- from that diagram, can you figure out  
14          where Eric's car was parked that night?

15   A.    It was somewhere in this library parking lot over  
16          here. I can't remember which one it was or how far  
17          down it was or what side it was on, but it was over  
18          here somewhere on this side of the library  
19          (indicating).

20   Q.    All right. Well, we're going to use this diagram  
21          for the rest -- to help us do the rest of the  
22          deposition. I've also got some pictures that I want  
23          to show you that have been marked as Defendant's  
24          Group Exhibit No. 1. You can just take a minute to  
25          flip through those. Do you have these?

1           were probably about like there (indicating), I would  
2       say, when she was yelling past us to her friend.

3   Q.    Okay. And this is both you and Eric walking?

4                    MR. VANN: Just for the record, he made a  
5       mark on the exhibit. Can we identify what that  
6       mark is?

7                    MR. BOSWELL:

8   Q.    This mark here, is this where you first saw her?

9                    MR. VANN: What is it?

10                  THE WITNESS:

11   A.    This is an X showing where we were standing.

12                    MR. BOSWELL:

13   Q.    You marked that with an X where you first heard her?

14   A.    Correct.

15   Q.    And then this that you've drawn here is the car  
16       where she was standing?

17   A.    Right.

18   Q.    Yelling back past you?

19   A.    She's the X next to the box, like that's the car,  
20       and the X would be her where she was standing.

21   Q.    And where are you standing?

22   A.    (Indicating).

23   Q.    You're standing at this X?

24   A.    We're coming toward her.

25                    MR. VANN: Why don't you put an S by your X

1 I'm not even exactly sure where we actually were,  
2 but there was guys that came up behind us, and they  
3 said something, I couldn't even tell you what they  
4 said, but they said something where I turned around,  
5 I looked at them, and I knew that they were coming  
6 at me like wrestling, and I put my hands up. I  
7 said, "Man, I'm just here to have a good time. I  
8 don't want to fight anybody." I could tell that's  
9 the way they were coming toward me.

10 Q. And where is Eric at this time?

11 A. Well, he was walking in front of me, but when I  
12 turned around, he was behind me because I --

13 MR. VANN: Why don't you mark that where you  
14 keep --

15 MR. BOSWELL: Yeah.

16 MR. VANN: You put a little X here. Why  
17 don't you put a C by that.

18 MR. BOSWELL:

19 Q. And then C indicates where the confrontation took  
20 place?

21 A. Yes.

22 Q. All right. So you said you turned around and now  
23 Eric is behind you?

24 A. Correct.

25 Q. Had Eric said anything to these guys?

1 to them in a stern manner." Okay. All right. You  
2 don't remember what he said, but how do you know  
3 that it was stern? Did he have an aggressive tone?  
4 I mean did he seem upset?

5 A. I really can't tell you. I can't remember.

6 Q. Okay. And looking at this doesn't refresh your  
7 recollection?

8 A. No, not really.

9 Q. So you just remember there was a confrontation, you  
10 say you put your hands up and said that you didn't  
11 want to fight. What happened after that?

12 A. Well, I got punched, and I ended up in a bush.  
13 That's where I landed.

14 Q. All right. Now, from where -- you indicated on  
15 Defendant's Exhibit 2 where the confrontation took  
16 place. That seems to be in the middle of the far  
17 end of Cavanaugh's parking lot. Where are these  
18 bushes that you got knocked into?

19 A. In front of the library. What happened was when I  
20 got hit, I took -- I didn't fall to the ground. As  
21 soon as I got hit, I just took a couple steps back.  
22 This grassy strip between the library and  
23 Cavanaugh's parking lot, there's a dip, and I just  
24 stumbled and tripped, and that's when I fell  
25 backwards.

- 1 A. No, no.
- 2 Q. Did you ever hear the fight break up in any way?
- 3 Did you hear anyone say: Break it up, get out of
- 4 here, anything like that?
- 5 A. No.
- 6 Q. All right. So eventually he stops punching you,
- 7 correct?
- 8 A. Correct.
- 9 Q. And you get up?
- 10 A. Correct.
- 11 Q. And what do you see then?
- 12 A. I see Eric, he was all bloody. That's when I called
- 13 911.
- 14 Q. Okay. Did Eric say anything to you?
- 15 A. No, I don't think he did. He was -- the people that
- 16 were around him were talking to him, and then I
- 17 don't know what they were saying. My main concern
- 18 was to get him help.
- 19 Q. So you said they took him back in the bar. Did you
- 20 go back in the bar with him?
- 21 A. Yes, I did.
- 22 Q. Did you say anything to him in there?
- 23 A. I just asked him if he was all right, you know.
- 24 Q. And what did he say?
- 25 A. He was very upset with -- he couldn't see anything

1           at that point.

2   Q.    Okay.  What happened next?

3   A.   The cops show up, the ambulance shows up, and I ride  
4       with him in the ambulance to the hospital.

5   Q.   The amount of time -- if you can recall back, the  
6       amount of time between when the fight started and  
7       when the ambulance shows up, how long of a time are  
8       we talking there, minutes, half an hour, five  
9       minutes?

10   A.   I'd say probably at least 20, 30 minutes.

11   Q.   Okay.  So Eric was back in the bar, and it took  
12       another half hour for the ambulance to show up?

13   A.   Oh, no.  Once we got -- I thought you meant from  
14       the --

15   Q.   So the entire -- I'm sorry.  The entire event was  
16       about 30 minutes; is that what you're saying?

17   A.   Correct.

18   Q.   From the time Eric got back in the bar, how long  
19       until the ambulance showed up?

20   A.   The ambulance showed up.  It didn't take very long  
21       for them to get there.  It was probably less than  
22       five minutes or so.

23   Q.   Okay.  So where did the -- I'm trying to get kind of  
24       a chain of events here.  So if you got back inside,  
25       and it was five minutes until the ambulance showed

1 Q. Talking to those guys.

2 A. Yeah, I don't know what he said, though.

3 Q. Okay. So it's your testimony that the only exchange  
4 of words you had with her was saying, "What," in  
5 response to her yelling at a friend?

6 A. As far as I can recall, yes.

7 Q. Okay. And then after that, some gentlemen  
8 approached you, and you put your hands up saying: I  
9 don't want to fight; is that correct?

10 A. Correct.

11 Q. And then sometime after that, someone punched you?

12 A. Correct.

13 Q. Would it be fair to say that this was an unexpected  
14 event?

15 A. Yes.

16 Q. When you yelled, "What," to this young lady, and I'm  
17 going to assume -- well, I'll ask you, were you  
18 saying that to be funny?

19 A. Yes.

20 Q. All right. Just in kind of a joking, casual manner?

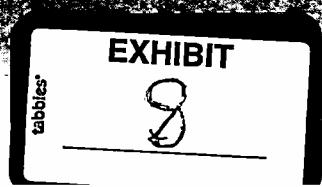
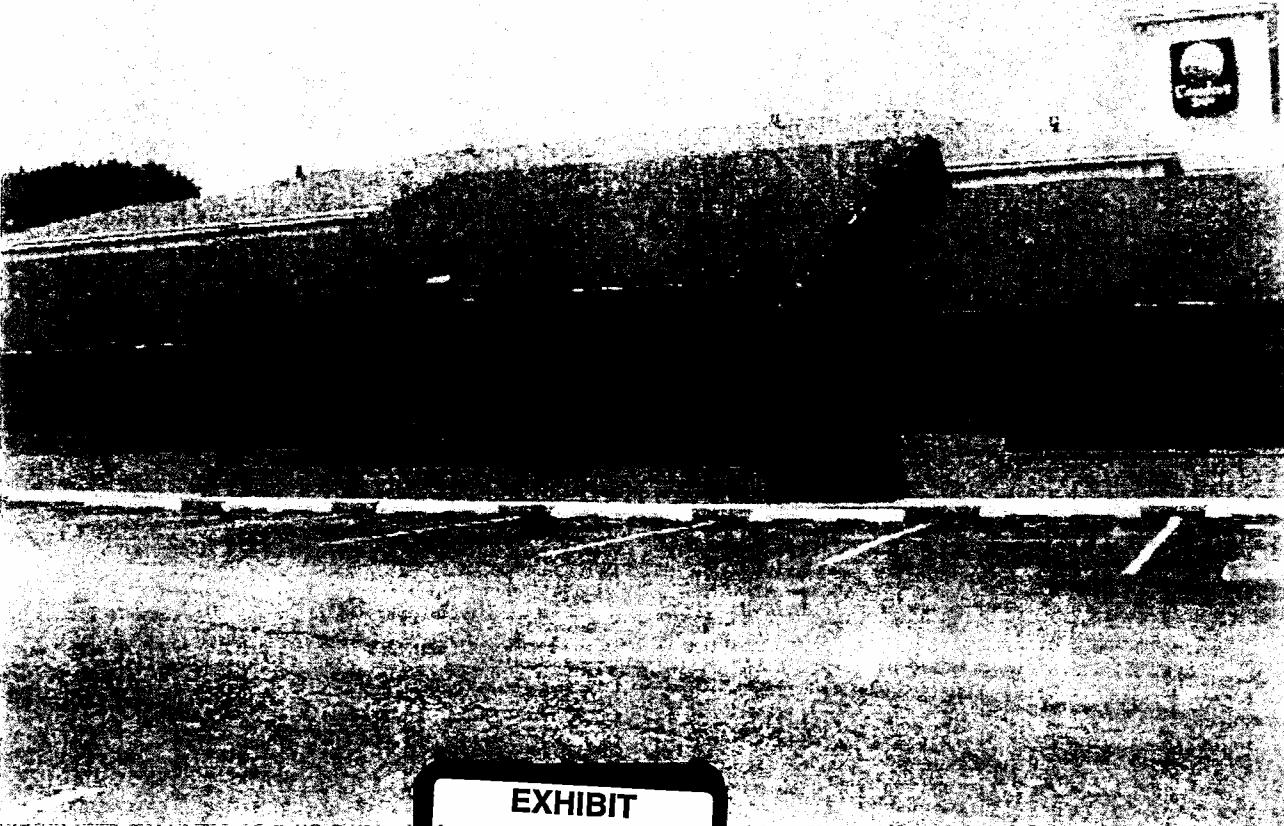
21 A. Correct.

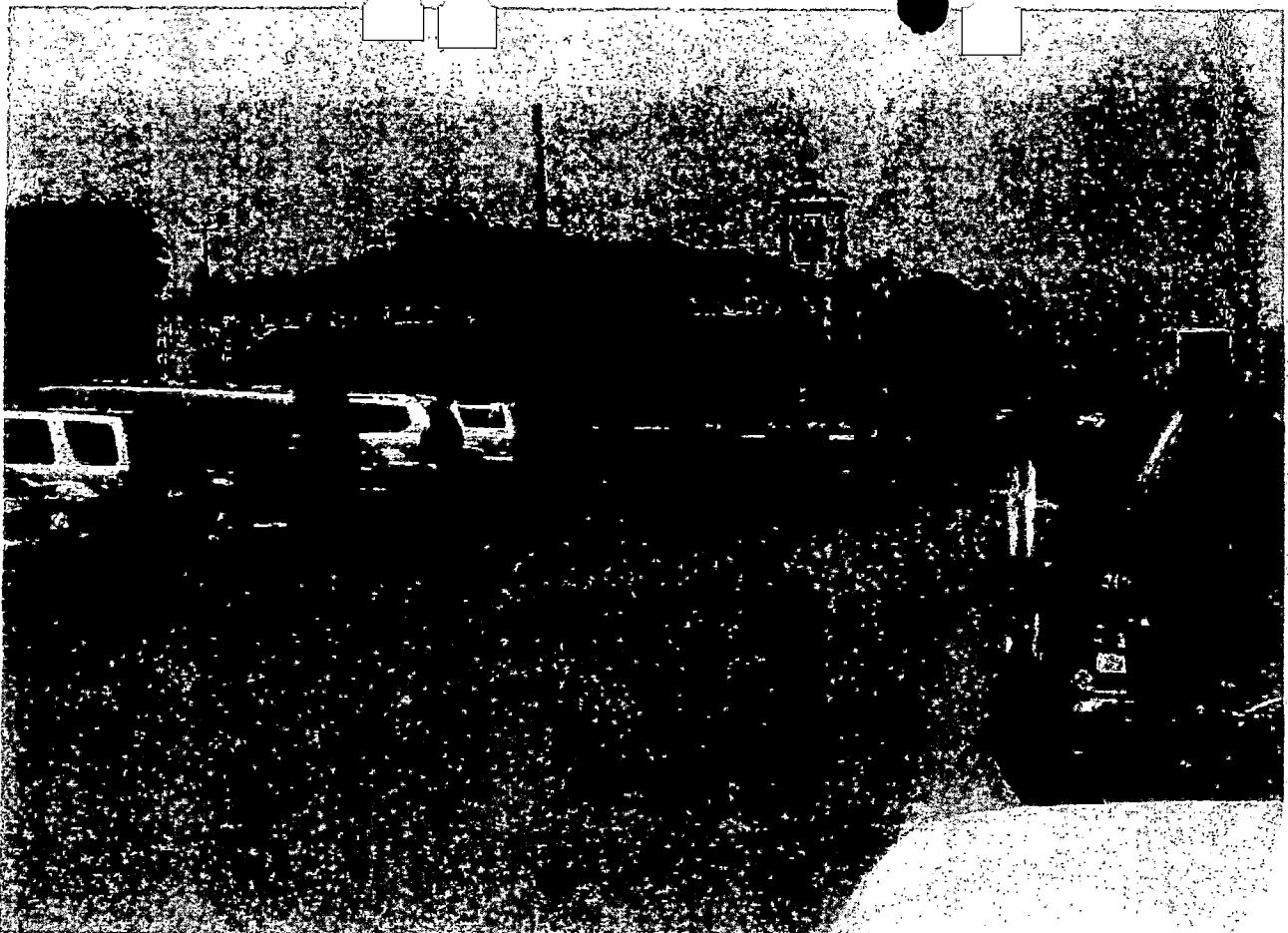
22 Q. You weren't try to initiate anything to her?

23 A. No, she was yelling to her friend, and I was just  
24 trying to be funny, and I was answering like kind of  
25 as her friend.



2





4



3

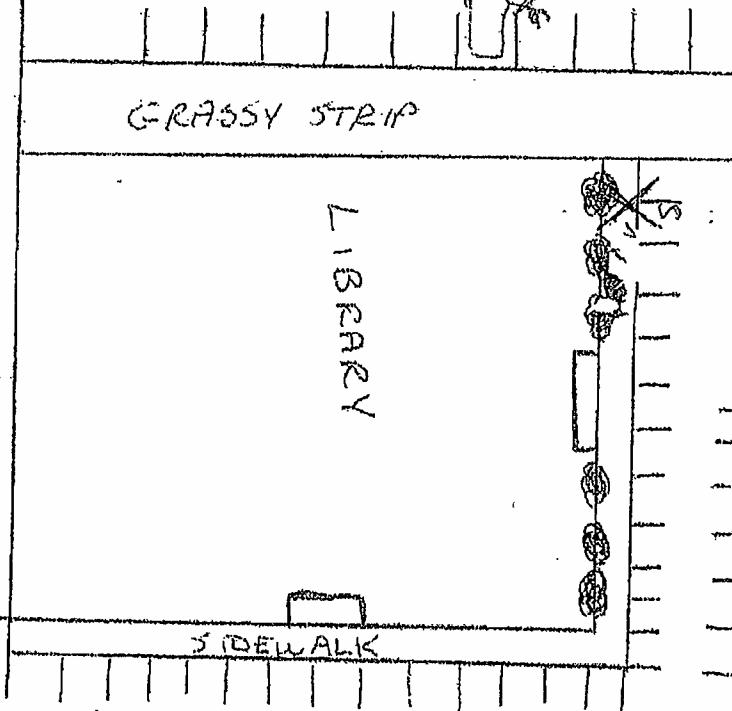
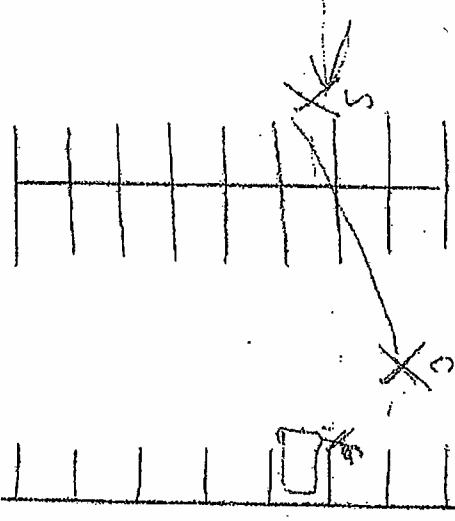
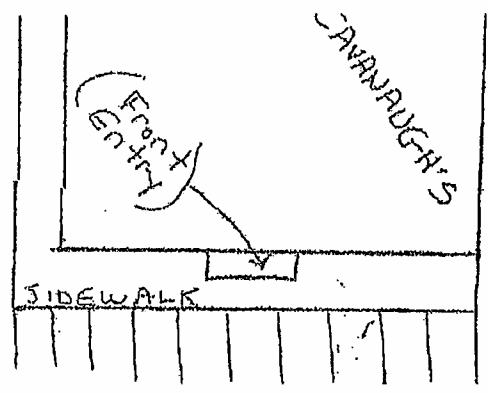
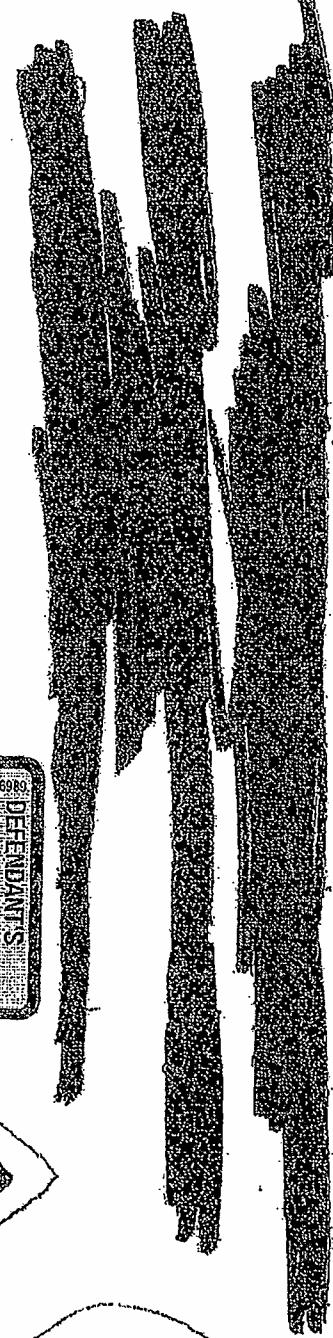
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STATE OF INDIANA )  
                    )SS:  
COUNTY OF LAKE )

IN THE LAKE SUPERIOR COURT  
ROOM NUMBER 4  
SITTING AT GARY, INDIANA

ERIC PORTERFIELD,                         )  
Plaintiff,                                  )  
vs.    ) Cause No.  
CAVANAUGH'S SPORTS BAR                    ) 45D04-0710-CT-00288  
& EATERY, LTD.,                            )  
Defendant.                                  )

The deposition of ANDREA ACEVEDO, taken at the instance of the Defendant herein, pursuant to notice and agreement as to time and place and pursuant to the Statutes of the State of Indiana, before Carrie Schultz, a CSR and Notary Public in and for the County of Porter, Indiana, at the office of Hoeppner, Wagner & Evans, LLP, on January 28, 2009, commencing at the hour of 1:30 o'clock in the afternoon.

COPY

SEIDEL & SASSE  
COURT REPORTERS, INC.  
150 W. Lincolnway, Suite 1005  
Valparaiso, IN 46383  
219.462.3436

EXHIBIT

tabbed

10

1           A P P E A R A N C E S:

2

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4           Merrillville, IN 46410

5           on behalf of the Plaintiff;

6

7           HOEPPNER, WAGNER & EVANS, LLP, by  
7           MICHAEL TOLBERT  
8           1000 East 80th Place  
8           Suite 606, South Tower  
9           Merrillville, IN 46410

10           on behalf of the Defendant.

11

12           \* \* \* \* \*

13

14           I N D E X

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EXAMINATION:

16           DIRECT EXAMINATION BY MR. TOLBERT	3
17           CROSS EXAMINATION BY MR. VANN	27
17           REDIRECT EXAMINATION BY MR. TOLBERT	53

18

19

EXHIBITS: (First marked or referred to)

20           Defendant's Exhibit 1	12
20           Defendant's Exhibit 2	55

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22           \* \* \* \* \*

- 1 Q. Ever seen any fights or witness any fights at  
2 Cavanaugh's?
- 3 A. Yes.
- 4 Q. Okay. And when did you witness that?
- 5 A. Every once in a while there'd be an altercation  
6 inside the bar.
- 7 Q. Inside the bar?
- 8 A. Yes.
- 9 Q. Had you ever witnessed anything in the parking lot?
- 10 A. No, I haven't.
- 11 Q. Okay. So most of your information with respect to  
12 the incident that occurred at Cavanaugh's would be  
13 inside the bar?
- 14 A. Yes.
- 15 Q. And none in the parking lot?
- 16 A. No.
- 17 Q. All right. Now, tell me a little bit about what  
18 happened that night, the night that this incident  
19 with Mr. Portefield occurred.
- 20 A. As we were leaving Cavanaugh's I was walking ahead  
21 of everybody else because I walk fast, and I was  
22 cold so I wanted to hurry up and get to my car. The  
23 skinny guy came up to me and made a rude comment.  
24 He cursed at me.
- 25 Q. What did he say?

- 1 A. I believe he said, "Fuck you, bitch." That's when I  
2 looked at him and I told him, "It's like 2:30, 3:00  
3 o'clock in the morning. You're drunk. Do you  
4 really want to start a problem?"
- 5 Q. Let me ask you this question: What date did this  
6 incident occur?
- 7 A. (No response)
- 8 Q. Don't remember?
- 9 A. No.
- 10 Q. Okay. My records show it was around December 10th,  
11 2006. Does that refresh your recollection?
- 12 A. Yeah.
- 13 Q. Okay. And was it cold outside?
- 14 A. Yeah.
- 15 Q. Okay. Was there snow on the ground?
- 16 A. I believe there was.
- 17 Q. Okay. All right. And you said the skinny guy?
- 18 A. Yeah.
- 19 Q. All right. Do you -- could you -- outside of  
20 identifying him as skinny, do you know of any other  
21 physical attributes that you could actually describe  
22 for us? Was he --
- 23 A. No.
- 24 Q. Was he tall? Short?
- 25 A. I think he was medium height and skinny. That's all

- 1 I know.
- 2 Q. Okay. All right.
- 3 A. But after I told him, you know, "It's late. You're
- 4 drinking. We don't need problems right now. Let's
- 5 just all go home," he apologized. He said he was
- 6 sorry.
- 7 Q. Okay. And what in turn did you do?
- 8 A. I thought that was it, it was gonna be over; that
- 9 everyone was just gonna keep going. Then that's
- 10 when the bigger guy came up -- heard him apologize,
- 11 came up and said, "What are you apologizing to this
- 12 bitch for. You don't have to apologize."
- 13 Q. Okay. And how loud did he say this?
- 14 A. Say -- not too soft, but he didn't scream it. He
- 15 said it like in a regular tone. I -- he would say
- 16 it louder than what a normal person would speak
- 17 because everybody was drinking. So he said it loud
- 18 enough for the people that were walking right behind
- 19 us to hear.
- 20 Q. Okay.
- 21 A. And that's when he turned around and said, "I'm not
- 22 scared of you guys. I don't care who you're with,"
- 23 and said words to them and that's when everything
- 24 broke out.
- 25 Q. Okay. And you say the bigger guy, could you

- 1           probably been clearer then than what it would be  
2           now, would you agree with that?
- 3 A.       Yeah.
- 4 Q.       What was your answer to that question, "What started  
5           the fight?"
- 6 A.       They --
- 7 Q.       Well, let me ask you this: What started the fight?
- 8 A.       What actually started the fight?
- 9 Q.       Yes.
- 10 A.       Well, the fight started after the big guy turned  
11          around and told everybody that he wasn't scared.
- 12 Q.       Okay.
- 13 A.       Like he -- he practically told everybody that he  
14          didn't care who I was with, shut up, cursed, said a  
15          bunch of different stuff.
- 16 Q.       Okay. On the second page where it has, "Do you have  
17          anything to add to the statement"?
- 18 A.       Uh-hum.
- 19 Q.       You have: "After the small guy apologized" --
- 20 A.       Uh-hum.
- 21 Q.       -- "the big guy approached us and said, 'If you have  
22          a problem, what are you bitches gonna do about it'?"
- 23 A.       Uh-hum.
- 24 Q.       That's yes, right?
- 25 A.       Yes.

- 1 Q. Is that specifically what you recall him saying to  
2 you?
- 3 A. Roughly, yes.
- 4 Q. Okay. And then you have, "Then he hit Jesus"?
- 5 A. Yes.
- 6 Q. Okay. Is that what you remember?
- 7 A. Yes.
- 8 Q. So --
- 9 A. That was Chuce (phonetic).
- 10 Q. -- I'm trying to get a chronology of events here.  
11 You have the situation with the smaller guy that  
12 curses at you, right?
- 13 A. Uh-huh.
- 14 Q. That's a yes?
- 15 A. Yes.
- 16 Q. Then you have the smaller guy that apologizes?
- 17 A. Yes.
- 18 Q. Right. And then you have the big guy that comes to  
19 you and says the statement, "Why are you apologizing  
20 to this B" --
- 21 A. Yes.
- 22 Q. -- right? And he says, "What are you B's gonna do  
23 about it"?
- 24 A. Yes.
- 25 Q. Okay. Then he hits Jesus?

- 1 A. Yes.
- 2 Q. Yes, okay. Did I capture your testimony correctly  
3 as far as the chronology?
- 4 A. Yes.
- 5 Q. Is there anything I missed?
- 6 A. No.
- 7 Q. Okay. So that was the first punch you recall being  
8 thrown?
- 9 A. Yes.
- 10 Q. Okay. By the big guy?
- 11 A. Yes.
- 12 Q. And do you know that big guy to be the plaintiff in  
13 this lawsuit, Eric Porterfield?
- 14 A. Yes.
- 15 Q. Okay. Now, you have Jesus fell, right?
- 16 A. Yes.
- 17 Q. Is that the next thing that happened after the big  
18 guy swung?
- 19 A. Yes.
- 20 Q. At that point you don't -- there's no punches at  
21 this point thrown other than from the big guy?
- 22 A. After he hit Jesus?
- 23 Q. Right.
- 24 A. After he hit Jesus, it just. . . .
- 25 Q. Okay. And then --

7. Defendant's Exhibit 7 – Stephen McPherson's Deposition Transcript, pp. 29, 30, 33, 35, 38, 47, 48, and 60
8. Defendant's Exhibit 8 – Photographs of Cavanaugh's
9. Defendant's Exhibit 9 – Stephen McPherson's Diagram
10. Defendant's Exhibit 10 – Andrea Acevedo's Deposition Transcript, pp. 8, 9, 10, 13, 14, 15, 16, 22, 23, 56, 57 and 63
11. Defendant's Exhibit 11 – Andrea Acevedo's Diagram
12. Defendant's Exhibit 12 – Jason Dorodo's Deposition Transcript, pp. 9, 16 and 18
13. Defendant's Exhibit 13 – Jesus Venegas' Deposition Transcript, pp. 18, 19, 20 and 27
14. Defendant's Exhibit 14 – Jesus Venegas' Diagram
15. Defendant's Exhibit 15 – Anthony Acevedo's Diagram
16. Defendant's Exhibit 16 – Anthony Acevedo's Deposition Transcript, pp. 18, 20, 23 and 24
17. Defendant's Exhibit 17 – Nick Korounos Deposition Transcript, pp. 5, 59, 65, 66 and 70
18. Defendant's Exhibit 18 – James H. Clark's Affidavit
19. Defendant's Exhibit 19 – Michael A. Vode's Deposition Transcript, pp 49 and 51

Respectfully submitted,

**TOLBERT & TOLBERT LLC**

By: Michael E. Tolbert  
Michael E. Tolbert, 22555-64  
Tolbert & Tolbert LLC  
1085 Broadway, Ste. B  
Gary, IN 46402  
Ph: 219-427-0094  
Fx: 219-427-0783

CERTIFICATE OF SERVICE

I certify that on the 31<sup>st</sup> day of January, 2018, service of a true and complete copy of the above foregoing pleading or paper was made upon each party or attorney of record herein by depositing same in the United States mail in envelopes properly addressed to each of them and with sufficient first-class postage affixed.

A. Leon Sarkisian  
Sarkisian Law Offices  
3893 East US Hwy. 30  
Merrillville, IN 46410  
Ph: 219-942-7171  
Fx: 219-942-7101

By: Michael Tolbert  
Michael E. Tolbert, 22555-64

STATE OF INDIANA )  
COUNTY OF LAKE ) SS:  
                    ) IN THE LAKE SUPERIOR COURT  
                    ) CIVIL DIVISION, ROOM FOUR  
                    ) GARY, INDIANA

ERIC PORTERFIELD ) CAUSE NO. 45D040710CT00288  
Plaintiff, )  
                    )

v. )  
                    )

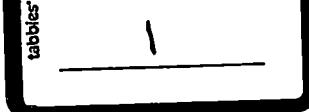
CAVANAUGH'S SPORTS BAR )  
& EATERY, LTD., )  
Defendant. )

**COMPLAINT FOR DAMAGES AND JURY DEMAND**

Comes now Plaintiff, Eric Porterfield, (hereinafter, "Porterfield"), by counsel, Robert G. Vann, and for his claim against Defendant, Cavanaugh's Sports Bar & Eatery, LTD, and states as follows:

1. On December 10, 2006, Porterfield was injured while a business invitee and a guest of Defendant, at its business establishment known as Cavanaugh's Sports Bar & Eatery, LTD, (hereinafter, "Cavanaugh's), located at 1013 W. US Hwy. 30, Schererville, Lake County, Indiana 46375.
2. The aforescribed business premises of Cavanaugh's is operated and controlled by Defendant.
3. The aforescribed business premises of Cavanaugh's is located in an area of criminal activity.
4. The aforescribed business premises of Cavanaugh's is known, or should have been known by Defendant, to be frequented by persons with a propensity to engage in

EXHIBIT



criminal conduct.

5. The aforescribed business premises of Cavanaugh's has experienced criminal activity for years prior to the attack on Porterfield.
6. The attack on Porterfield was a proximate result of the negligent and/or wanton and/or reckless conduct of Cavanaugh's which includes, but is not limited to:
  - a. Failing to provide adequate security for customers;
  - b. Failing to take precautions to protect customers when it knew or should have known in the exercise of reasonable care of the danger existing to said customers;
  - c. Failing to adequately warn customers of the dangers or hazards of using the Defendant's business or establishment;
  - d. Failing to maintain the business premises in a reasonably safe and secure condition for its patrons;
  - e. Failing to provide adequately trained security guards to patrol the area or otherwise failing to maintain security by posting signs, securing premises area with fences, maintaining lights or other deterrents;
  - f. Failing to take effective action to protect Porterfield regarding criminal conduct reported on premises;
  - g. Failing to conduct a systematic analysis to determine the crime rate in the general area and take security measures needed given the high crime rate;
  - h. Failing to consult with the local police department for crime statistics and take security measures needed given the high crime rate;

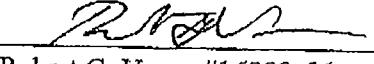
- i. Failing to systematically analyze the incident reports of crimes which were reportedly directed to the premises regarding offenses at the premises and taking appropriate security measures;
- j. Failing to adequately train or utilize professional security personnel to secure the safety of guests;
- k. Failing to consult with other businesses in the general area for crime statistics and/or other problems being faced and take appropriate security measures;
- l. Failing to make systematic analysis of criminal offenses being committed at the premises and failing to take appropriate security measures;
- m. Failing to survey whether business premises had a high crime rate;
- n. Failing to properly train personnel employed by Cavanaugh's in regard to security or customer safety;
- o. Failing to maintain a liaison with the local or county police departments for rapid response to criminal activity on the premises;
- p. Failing to adequately supervise security forces maintained on the premises;
- q. Failing on all levels of Cavanaugh's business operations to properly evaluate the need for security in order to properly protect paying customers at the premises;
- r. Failing to provide monthly meetings on safety to supervise security personnel and assess the need for security at the premises;
- s. Failing to consult outside security consultants in reference to the need for security personnel and/or safety measures which would protect a paying

customer;

- t. Failing to obtain and/or failing to utilize criminal data obtained which showed a clear foreseeability of an assault and robbery of the type suffered by Porterfield;
  - u. Failing to obtain and/or failing to utilize criminal data obtained which showed a clear foreseeability of an assault and robbery of the type suffered by Porterfield;
  - v. Failing to warn Porterfield of the lack of adequate security on the premises;
  - w. Failing to provide Porterfield with a safe environment in a portion of the premises less accessible to crime and more supervised by Cavanaugh's; and
  - x. Failing to limit the access of the premises by criminals by the placement of fencing or gates.
7. As a direct and proximate result of Cavanaugh's negligent and/or reckless conduct, Porterfield sustained severe physical and mental injuries and is now permanently disabled due to injuries sustained on said premises, has endured physical and mental pain and suffering, has incurred a loss of earnings and/or an impairment of earnings capacity, has incurred medical and hospital expenses and will likely incur additional such expenses in the future, and has suffered a disfigurement and deformity and experienced fright, humiliation and mental anguish all as a proximate result of the aforesubscribed wrongful conduct.

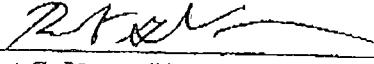
WHEREFORE, Plaintiff, Eric Porterfield, by counsel, respectfully requests judgment in his favor and against Defendant, Cavanaugh's Sports Bar & Eatery, LTD, and for the following relief:

1. For a sum which would reasonably compensate him for his damages herein;
2. For recoverable attorney fees, costs, and interest; and
3. For all other just and proper relief in the premises.

  
Robert G. Vann, #16223-56  
Attorney for Plaintiff  
500 East 86<sup>th</sup> Avenue  
Merrillville, IN 46410  
PH: (219) 736-0600  
FX: (219) 769-1302

JURY DEMAND

Plaintiff, by counsel, demands trial by jury.

  
Robert G. Vann, #16223-56  
Attorney for Plaintiff  
500 East 86<sup>th</sup> Avenue  
Merrillville, IN 46410  
PH: (219) 736-0600  
FX: (219) 769-1302

STATE OF INDIANA )  
COUNTY OF LAKE )

)SS:  
IN THE SUPERIOR COURT OF LAKE COUNTY  
CIVIL DIVISION, ROOM NUMBER FOUR  
SITTING AT GARY, INDIANA

ERIC PORTERFIELD, )  
Plaintiff )  
VS. )  
NV ENTERPRISES, LTD., d/b/a )  
CAVANAUGH'S SPORTS )  
BAR & EATERY, )  
Defendant )

CAUSE NO. 45D04-0710-CT-00288

**FILED IN OPEN COURT**

JUN 30 2010

**ORDER**

*Krall N. Arlanoff*  
JUDGE  
SUPERIOR COURT OF LAKE COUNTY

Comes now the Plaintiff, ERIC PORTERFIELD, by his attorney, ROBERT G. VANN, and comes now the Defendant, NV ENTERPRISES, LTD., d/b/a CAVANAUGH'S SPORTS BAR & EATERY, by its attorney, MICHAEL E. TOLBERT, for a pretrial conference. The same is held.

The Court orders as follows:

1. The parties shall identify their expert witnesses no later than February 21, 2011, provided, however, that this duty to disclose expert witnesses shall not serve to enlarge or extend the time within which a party is required to supplement a response to previously served discovery as required by Rule 26(E) Indiana Rules of Trial Procedure.
2. Discovery shall be completed by April 21, 2011.
3. The parties shall exchange their lists of witnesses, exhibits and contentions of fact and law on or before May 6, 2011.
4. The defendant's attorney, MICHAEL E. TOLBERT, shall prepare and submit a proposed pretrial order on or before May 23, 2011.

**EXHIBIT**

Tables

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5. All motions relating to trial procedure, including motions in limine, shall be received by the Court on or before June 6, 2011. Any pretrial motions filed after the designated date shall be automatically denied.

6. The parties shall submit proposed instructions to the jury on or before June 13, 2011, with leave being granted to supplement such instructions after the completion of the evidence.

7. This cause is set for a four (4) day jury trial during the week of June 20, 2011, as a primary setting.

**SO ORDERED** this 30th day of June, 2010.

Gerald N. Svetanoff  
GERALD N. SVETANOFF, JUDGE

STATE OF INDIANA                         )                                  IN THE LAKE SUPERIOR COURT  
  ) SS:    CIVIL DIVISION, ROOM FOUR  
COUNTY OF LAKE                            )    GARY, INDIANA

ERIC PORTERFIELD                            )    CAUSE NO. 45D04-0710-CT-00288  
Plaintiff,                                    )  
  )  
v.    )  
  )  
CAVANAUGH'S SPORTS BAR                    )  
& EATERY, LTD.,                            )  
Defendant.                                    )

**SECOND AMENDED COMPLAINT FOR DAMAGES AND JURY DEMAND**

Comes now Plaintiff, Eric Porterfield, (hereinafter, "Porterfield"), by counsel, Robert G. Vann, and for his claim against Defendant, Cavanaugh's Sports Bar & Eatery, LTD, and states as follows:

1. On December 10, 2006, Porterfield was injured while a business invitee and a guest of Defendant, at its business establishment known as Cavanaugh's Sports Bar & Eatery, LTD, (hereinafter, "Cavanaugh's), located at 1013 W. US Hwy. 30, Schererville, Lake County, Indiana 46375.
2. The aforescribed business premises of Cavanaugh's is operated and controlled by Defendant.
3. The aforescribed business premises of Cavanaugh's is located in an area of criminal activity.
4. The aforescribed business premises of Cavanaugh's is known, or should have been known by Defendant, to be frequented by persons with a propensity to engage in

criminal conduct.

5. The aforescribed business premises of Cavanaugh's has experienced criminal activity for years prior to the attack on Porterfield.
6. The attack on Porterfield was a proximate result of the negligent and/or wanton and/or reckless conduct of Cavanaugh's which includes, but is not limited to:
  - a. Failing to provide adequate security for customers;
  - b. Failing to take precautions to protect customers when it knew or should have known in the exercise of reasonable care of the danger existing to said customers;
  - c. Failing to adequately warn customers of the dangers or hazards of using the Defendant's business or establishment;
  - d. Failing to maintain the business premises in a reasonably safe and secure condition for its patrons;
  - e. Failing to provide adequately trained security guards to patrol the area or otherwise failing to maintain security by posting signs, securing premises area with fences, maintaining lights or other deterrents;
  - f. Failing to take effective action to protect Porterfield regarding criminal conduct reported on premises;
  - g. Failing to conduct a systematic analysis to determine the crime rate in the general area and take security measures needed given the high crime rate;
  - h. Failing to consult with the local police department for crime statistics and take security measures needed given the high crime rate;

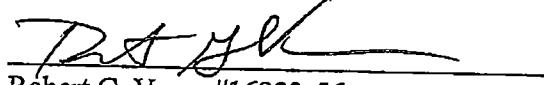
- i. Failing to systematically analyze the incident reports of crimes which were reportedly directed to the premises regarding offenses at the premises and taking appropriate security measures;
- j. Failing to adequately train or utilize professional security personnel to secure the safety of guests;
- k. Failing to consult with other businesses in the general area for crime statistics and/or other problems being faced and take appropriate security measures;
- l. Failing to make systematic analysis of criminal offenses being committed at the premises and failing to take appropriate security measures;
- m. Failing to survey whether business premises had a high crime rate;
- n. Failing to properly train personnel employed by Cavanaugh's in regard to security or customer safety;
- o. Failing to maintain a liaison with the local or county police departments for rapid response to criminal activity on the premises;
- p. Failing to adequately supervise security forces maintained on the premises;
- q. Failing on all levels of Cavanaugh's business operations to properly evaluate the need for security in order to properly protect paying customers at the premises;
- r. Failing to provide monthly meetings on safety to supervise security personnel and assess the need for security at the premises;
- s. Failing to consult outside security consultants in reference to the need for security personnel and/or safety measures which would protect a paying

customer;

- t. Failing to obtain and/or failing to utilize criminal data obtained which showed a clear foreseeability of an assault and robbery of the type suffered by Porterfield;
  - u. Failing to obtain and/or failing to utilize criminal data obtained which showed a clear foreseeability of an assault and robbery of the type suffered by Porterfield;
  - v. Failing to warn Porterfield of the lack of adequate security on the premises;
  - w. Failing to provide Porterfield with a safe environment in a portion of the premises less accessible to crime and more supervised by Cavanaugh's; and
  - x. Failing to limit the access of the premises by criminals by the placement of fencing or gates.
7. As a direct and proximate result of Cavanaugh's negligent and/or reckless conduct, Porterfield sustained severe physical and mental injuries and is now permanently disabled due to injuries sustained on said premises, has endured physical and mental pain and suffering, has incurred a loss of earnings and/or an impairment of earnings capacity, has incurred medical and hospital expenses and will likely incur additional such expenses in the future, and has suffered a disfigurement and deformity and experienced fright, humiliation and mental anguish all as a proximate result of the aforescribed wrongful conduct.

WHEREFORE, Plaintiff, Eric Porterfield, by counsel, respectfully requests judgment in his favor and against Defendant, Cavanaugh's Sports Bar & Eatery, LTD, and for the following relief:

1. For a sum which would reasonably compensate him for his damages herein;
2. For recoverable attorney fees, costs, and interest; and
3. For all other just and proper relief in the premises.

  
Robert G. Vann, #16223-56  
Attorney for Plaintiff  
500 East 86<sup>th</sup> Avenue  
Merrillville, IN 46410  
PH: (219) 736-0600  
FX: (219) 769-1302

**JURY DEMAND**

Plaintiff, by counsel, demands trial by jury.

  
Robert G. Vann, #16223-56  
Attorney for Plaintiff  
500 East 86<sup>th</sup> Avenue  
Merrillville, IN 46410  
PH: (219) 736-0600  
FX: (219) 769-1302

CERTIFICATE OF SERVICE

I certify that on the \_\_\_\_\_ day of April, 2011, service of a true copy of the above pleading was made upon:

Michael E. Tolbert, Esq., Atty # 22555-64  
HOEPPNER WAGNER & EVANS LLP  
1000 E 80th Place, Suite 606S  
Merrillville, IN 46410  
PH: 769-6552  
FX: 738-2349  
Attorney for Defendant

by depositing the same in the U.S. Mail with proper postage affixed.



---

Robert G. Vann, #16223-56  
Attorney at Law  
500 East 86<sup>th</sup> Avenue  
Merrillville, IN 46410  
PH: (219) 736-0600  
FX: (219) 769-1302

CCS ENTRY FORM  
LAKE SUPERIOR COURT

FILED IN OPEN COURT  
File Stamp Here

MAY 26 2011

*Herald N. Avetanoff*  
JUDGE  
SUPERIOR COURT OF LAKE COUNTY

CASE NUMBER: 45D04-0710-CT-288

CAPTION: Eric Porterfield vs. Cavanaugh's Sports Bar & Eatery, Ltd.

The activity of the Court should be summarized as follows on the Chronological Case Summary (CCS):

Defendant, by counsel, files Answer to Second Amended Complaint.

These documents are being filed pursuant to Trial Rule 5(F)(3) by certified mail. Please show them file-marked as of May 26, 2011.

**MOVING COUNSEL:**

Michael E. Tolbert, 22555-64  
Hoeppner Wagner & Evans LLP  
1000 East 80th Place, Suite 600 S  
Merrillville, Indiana 46410  
(219) 769-6552  
Attorney for Defendant

**OPPOSING COUNSEL:**

Robert G. Vann  
Attorney At Law  
500 East 86<sup>th</sup> Avenue  
Merrillville, Indiana 46410  
Attorney for Plaintiff

\*\*\*\*\*  
**(TO BE DESIGNATED BY THE COURT)**

This CCS Entry Form Shall Be:

- Placed in case file  
 Discarded after entry on the CCS  
 Mailed to all counsel by: \_\_\_\_\_Counsel \_\_\_\_\_Clerk \_\_\_\_\_Court  
 There is no attached order OR

The attached order shall be placed in the RJO: Yes  No

DATE MAY 26 2011

APPROVED

*Herald N. Avetanoff*  
Judge, Lake Superior Court

**CERTIFICATE OF SERVICE**

I certify that on May 26, 2011, service of a true and complete copy of the above foregoing pleading or paper was made upon each party or attorney of record herein by depositing same in the United States mail in envelopes properly addressed to each of them and with sufficient first-class postage affixed.

*Millie Tolbert*  
Michael E. Tolbert, #22555-64

EXHIBIT

tabbed

4

STATE OF INDIANA ) LAKE SUPERIOR COURT  
COUNTY OF LAKE ) )  
ERIC PORTERFIELD ) )  
Plaintiff ) )  
vs. ) CAUSE NO: 45D04-0710-CT-288  
CAVANAUGH'S SPORTS BAR & )  
EATERY, LTD )  
Defendant )

MAY 26 2011  
*Harold M. Astang*  
JUDGE  
SUPERIOR COURT OF LAKE COUNTY

**DEFENDANT'S ANSWER TO SECOND AMENDED COMPLAINT**

Comes now Defendant, Cavanaugh's Sports Bar & Eatery, LTD, by counsel, Michael E. Tolbert of the law offices of Hoeppner Wagner & Evans LLP, for its Answer to Plaintiff's Second Amended Complaint states:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of rhetorical paragraph 1 of Plaintiff's Second Amended Complaint and, therefore, denies same.
2. Defendant admits that it controlled and operated Cavanaugh's Sports Bar & Eatery, Ltd. on December 10, 2006. To the extent the allegations in rhetorical paragraph 2 of Plaintiff's Second Amended Complaint are intended to expand the scope of the law of premises liability in Indiana or to impermissibly impose liability, such allegations are hereby denied.
3. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of rhetorical paragraph 3 of Plaintiff's Second Amended Complaint and, therefore, denies same.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of rhetorical paragraph 4 of Plaintiff's Second Amended Complaint and, therefore, denies same.

5. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of rhetorical paragraph 5 of Plaintiff's Second Amended Complaint and, therefore, denies same.

6. Defendant denies the allegations of rhetorical paragraph 6 and all sub-parts therein of Plaintiff's Second Amended Complaint.

7. Defendant denies the allegations of rhetorical paragraph 7 of Plaintiff's Second Amended Complaint.

**WHEREFORE**, Defendant prays that Plaintiff take nothing by way of his Second Amended Complaint, for the costs of this action, and for all other just and proper relief in the premises.

Respectfully submitted,

**HOEPPNER WAGNER & EVANS LLP**



Michael E. Tolbert, 22555-64  
Attorney for Defendant

HOEPPNER WAGNER & EVANS LLP  
1000 East 80<sup>th</sup> Place  
Twin Towers - South, 6<sup>th</sup> Floor  
Merrillville, IN 46410  
219-769-6552

## **AFFIRMATIVE DEFENSES**

Comes now Defendant, Cavanaugh's Sports Bar & Eatery, LTD, by counsel, Michael E. Tolbert of the law offices of Hoeppner Wagner & Evans LLP, and for its Affirmative Defenses to Plaintiff's Second Amended Complaint, state:

1. Defendant asserts, as to the fault of the Plaintiff, each and every defense provided under the Indiana Comparative Fault Act; specifically, Defendant contends that the fault of the Plaintiff was such that he is either barred from recovery or that his recovery should be diminished in proportion to fault.
2. Defendant reserves all rights to add any additional defenses which would develop as a result of discovery, further investigation, or raised as a result of court decisions in the future.
3. Defendant asserts each and every applicable defense as set forth in Trial Rule 8(c).
4. Defendant states that as to any and all rhetorical paragraphs of Plaintiff's Second Amended Complaint not heretofore specifically admitted, controverted or denied, the same are now hereby specifically denied.
5. Defendant is entitled to a set-off or credit for any and all collateral source(s) payments made to or on behalf of the Plaintiff herein.
6. The Plaintiff has brought this action which is frivolous, unreasonable, or groundless, and Defendant is entitled to attorney fees and costs pursuant to I.C. § 34-52-1-1.